रजिस्ट्री सं. डी.एल. (एन) 04/0007/2003—05 REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
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सं. 27] नई दिल्ली, जुलाई 26—अगस्त 1, 2020, शनिवार/ श्रावण 4—श्रावण 10, 1942
No. 27] NEW DELHI, JULY 26—AUGUST 1, 2020, SATURDAY/SRAVANA 4— SRAVANA 10, 1942

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India (Other than the Ministry of Defence)

पैट्रोलियम एवं प्राकृतिक गैस मंत्रालय

नई दिल्ली, 15 जुलाई, 2020

का.आ. 590.—केन्द्रीय सरकार ने पैट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार के अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसमे इसके पश्चात उक्त अधिनियम कहा गया) की धारा 3 की उपधारा (1) के अधीन जारी की गई भारत सरकार के पेट्रोलियम एवं गैस मंत्रालय की अधिसूचना सं. का.आ. 772 तारीख 08/05/2019 जो राजपत्र सं. 20 तारीख 12/05/2019 से 18/05/2019 एवं का. आ. 1214 तारीख 03/07/2019 जो भारत के राजपत्र सं. 28 तारीख 07/07/2019 से 13/07/2019 एवं का. आ. 1874 तारीख 16/10/2019 जो भारत के राजपत्र सं. 43 तारीख 20/10/2019 से 26/10/2019 मे प्रकाशित की गई थी, द्वारा उस अधिसूचना मे संलग्न अनुसूची मे विनिर्दिष्ट भूमि में केरल राज्य मे भारत पैट्रोलियम कार्पोरेशन लिमिटेड की कोच्चि रिफाइनरी से सेलम तक द्रवित पैट्रोलियम गैस के परिवहन के लिए कोच्चि कोयम्बटूर सेलम पाइपलाइन परियोजना के माध्यम से कोच्चि सेलम पाइपलाइन प्राइवेट लिमिटेड द्वारा एक पाइपलाइन बिछाने के प्रयोजन के लिए उपयोग के अधिकार का अर्जन के अपने आशय की घोषणा की थी।

और उक्त राजपत्र अधिसूचना की प्रतियां जनता को तारीख 22/07/2019 से 21/11/2019 के बीच उपलब्ध करा दी गई थी।

और सक्षम प्राधिकारी ने, उक्त अधिनियम की धारा 6 की उपधारा (1) के अधीन, केंद्रीय सरकार को अपनी रिपोर्ट दे दी है।

और केंद्रीय सरकार ने, उक्त रिपोर्ट पर विचार करने के पश्चात, और यह समाधान हो जाने पर की उक्त भूमि पाइपलाइन बिछाने के लिए अपेक्षित है, उसमें उपयोग के अधिकार का अर्जन करने का विनिश्चय किया है ।

अतः अब केंदीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि इस अधिसूचना से संलग्न अनुसूची मे विनिर्दिष्ट भूमि में पाइपलाइन बिछाने के उपयोग के अधिकार का अर्जन किया जाता है ।

और केंद्रीय सरकार उक्त अधिनियम कि धारा 6 कि उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निर्देश देती है कि उक्त भूमि में उपयोग का अधिकार इस घोषणा के प्रकाशन कि तारीख को केंद्रीय सरकार मे निहित होने कि बजाए, सभी विल्लंगमों से मुक्त, कोच्चि सेलम पाइपलाइन प्राइवेट लिमिटेड मे निहित होगा।

अनुसूची

राज्यः केरल **जिला : त्रिशूर** **तालुक : मुकुंदपुरम**

नाम ग्राम	सर्वे नम्बर	क्षेत्रफल (अनुमानित)		
		हेक्टेयर	एरिया	प्रति वर्गमीटर
पारापूक्कारा	80/1	0	01	00
	82/2	0	03	40
	82/3	0	01	00
	874/4	0	01	60
	874/6	0	00	20
	875/1–1	0	01	40
	875/1–3	0	01	44
राज्य: केरल	**जिला: त्रिशूर**		**तालुक: चालक्कुडी**	
चालक्कुडी पश्चिम	282/2	0	19	58
किषक्कमुरी (खण्ड सं. 49)	859/9	0	02	46
राज्य: केरल	**जिला: ऐरनाकुलम**		**तालुक: आलुवा**	
तेक्कुम्बागम (खण्ड सं. 30)	149/3	0	01	00
	156/1	0	02	10
	156/2	0	02	70
	156/13	0	03	30
	195/7	0	01	55
	197/1	0	00	36
	197/2	0	02	54
	197/3	0	01	82
	197/10	0	07	47
	214/4	0	01	50
	214/5	0	02	70
	214/6	0	04	37
राज्य: केरल	**जिला: ऐरनाकुलम**		**तालुक: आलुवा**	
वडक्कुम्बागम (खण्ड सं. 28)	158/10	0	02	00
	158/17	0	03	00
	192/7	0	04	85
	192/9	0	03	50
करुकुटि (खण्ड सं. 2)	360/9	0	03	42
कीज़माड़ (खण्ड सं. 32)	301/5	0	01	00
राज्य: केरल	**जिला: ऐरनाकुलम**		**तालुक: कुन्नाथुनाडू**	
मारमपिल्लि (खण्ड सं. 24)	109/10	0	00	50

	109/11	0	05	10
राज्य: केरल	**जिला: त्रिशूर**		**तालुक: चालक्कुडी**	
काल्लूर तेक्कुमुर्री (खण्ड सं. 50)	506/1	0	04	00
	506/3	0	05	20
किषक्कमुरी (खण्ड सं. 49)	841/3	0	05	61
	859/10	0	08	00
राज्य: केरल	**जिला: पालाकाड**		**तालुक: आलाथूर**	
कोजाल्मन्नम (खण्ड सं. 16)	570/1	0	00	65
वाडक्कनचेरी–1 (खंड सं. 34)	677/2	0	02	80
राज्य: केरल	**जिला: त्रिशूर**		**तालुक: चालक्कुडी**	
काल्लूर तेक्कुमुर्री (खण्ड सं. 50)	311/6	0	09	50
राज्य: केरल	**जिला: त्रिशूर**		**तालुक: मुकुंदपुरम**	
पारापूक्कारा	874/1	0	03	00
	877/1	0	06	90
राज्य: केरल	**जिला: पालाकाड**		**तालुक: पालाकाड**	
कन्नाडी–2 (खंड सं 50)	487/18	0	01	04
पुथुसेरी मध्य (खंड सं 34)	560/2 पीटी	0	09	22
	560/3 पीटी	0	00	81

[फा. सं. आर-12031/196/2017-ओआर-I/ई-19746]

पी. सोमाकुमार, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 15th July, 2020

S.O. 590.—Whereas by the Notification of the Government of India in the Ministry of Petroleum and Natural Gas S.O. No. 772 dated 08.05.2019 published in Govt. of India Gazette No. 20 dated 12.05.2019 to 18.05.2019, S.O. No. 1214 dated 03.07.2019 published in Govt of India Gazette No. 28 dated 07.07.2019 to 13.07.2019 and S.O. No. 1874 dated 16.10.2019 published in Govt of India Gazette No. 43 dated 20.10.2019 to 26.10.2019 issued under sub-section (1) of section 3of the Petroleum and Minerals Pipelines (Acquisition of Right of User in the Land) Act, 1962 (Central Act 50 of 1962) (herein after referred to as said Act), the Central Government declared its intention to acquire the Right of User in the land specified in the schedule appended to that notification for the purpose of laying pipeline for the transportation of Liquefied Petroleum Gas from Kochi Refinery of Bharat Petroleum Corporation Limited in the State of Kerala to Salem in the State of Tamilnadu.

AND, Whereas, the copies of the said Gazette Notifications have been made available to the public between 22.07.2019 to 21.11.2019 respectively.

AND, Whereas, the Competent Authority in pursuance of sub section (1) of section 6 of the said Act has submitted his report to the Central Government.

AND, Whereas, the Central Government, after considering the said report, is satisfied that the Right of User in the said land specified in the schedule appended should be acquired.

Now, therefore in exercise of the powers conferred by sub section (1) of the Section 6 of the said Act, the Central Government hereby declared that the Right of User in the Land specified in the schedule appended to this notification are hereby acquired.

AND, further, in exercise of powers conferred by sub section (4) of the section 6 of the said Act, the Central Government hereby directs that the Right of User in the said lands shall, instead of vesting in the Central Government vest free from all encumbrances in the Kochi – Salem Pipeline Private Limited.

SCHEDULE

STATE: KERALA DISTRICT : THRISSUR TALUK : MUKUNDAPURAM

VILLAGE	SURVEY NUMBERS	AREA (APPROXIMATE)		
		HECTARES	ARES	SQ:METERS
PARAPPUKKARA	80/1	0	01	00
	82/2	0	03	40
	82/3	0	01	00
	874/4	0	01	60
	874/6	0	00	20
	875/1-1	0	01	40
	875/1-3	0	01	44
STATE: KERALA	**DISTRICT : THRISSUR**		**TALUK : CHALAKKUDY**	
WEST CHALAKKUDY	282/2	0	19	58
KIZHAKKUMMURI BLOCK. NO. 49	859/9	0	02	46
STATE : KERALA	**DISTRICT : ERNAKULAM**		**TALUK : ALUVA**	
THEKKUMBHAGAM BLOCK. NO. 30	149/3	0	01	00
	156/1	0	02	10
	156/2	0	02	70
	156/13	0	03	30
	195/7	0	01	55
	197/1	0	00	36
	197/2	0	02	54
	197/3	0	01	82
	197/10	0	07	47
	214/4	0	01	50
	214/5	0	02	70
	214/6	0	04	37
STATE : KERALA	**DISTRICT : ERNAKULAM**		**TALUK : ALUVA**	
VADAKKUMBHAGAM BLOCK. NO. 28	158/10	0	02	00
	158/17	0	03	00
	192/7	0	04	85
	192/9	0	03	50
KARUKUTTY BLOCK. NO. 2	360/9	0	03	42
KEEZHMAD BLOCK. NO. 32	301/5	0	01	00
STATE : KERALA	**DISTRICT : ERNAKULAM**		**TALUK : KUNNATHUNADU**	
MARAMPILLY BLOCK. NO.24	109/10	0	00	50
	109/11	0	05	10
STATE : KERALA	**DISTRICT : THRISSUR**		**TALUK : CHALAKKUDY**	
KALLOOR THEKKUMMURI BLOCK. NO. 50	506/1	0	04	00
	506/3	0	05	20
KIZHAKKUMMURI BLOCK. No. 49	841/3	0	05	61
	859/10	0	08	00
STATE : KERALA	**DISTRICT : PALAKKAD**		**TALUK : ALATHUR**	
KUZHALMANNAM - I BLOCK. NO. 16	570/1	0	00	65
VADAKKANCHERY – I BLOCK. No. 34	677/2	0	02	80

STATE : KERALA	**DISTRICT : THRISSUR**		**TALUK : CHALAKKUDY**	
KALLOOR THEKKUMMURI BLOCK. NO. 50	311/6	0	09	50
STATE: KERALA	**DISTRICT : THRISSUR**		**TALUK:MUKUNDAPURAM**	
PARAPPUKKARA	874/1	0	03	00
	877/1	0	06	90
STATE : KERALA	**DISTRICT : PALAKKAD**		**TALUK : PALAKKAD**	
KANNADI – II BLOCK. No. 50	487/18	0	01	04
PUDUSSERY CENTRAL BLOCK. No. 34	560/2 pt	0	09	22
	560/3 pt	0	00	81

[F. No. R-12031/196/2017-OR-I/E-19746]

P. SOMAKUMAR, Under Secy.

नई दिल्ली, 29 जुलाई, 2020

का.आ. 591.—केन्द्रीय सरकार, एतदद्वारा, तेल उद्योग (विकास) अधिनियम, 1974 (1974 का 47) की धारा 3 की उपधारा 3(ग) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, श्री श्रीकांत माधव वैद्य, अध्यक्ष, आईओसीएल को दिनाँक 01.07.2020 to 30.06.2022 तक अथवा अगले आदेशों तक, जो भी पहले हो, तेल उद्योग विकास बोर्ड के सदस्य के रूप में नियुक्त करती है।

[फा. सं. जी-38011/41/2016-वित्त-I]

पेरिन देवी, निदेशक

New Delhi, the 29th July, 2020

S.O. 591.—In exercise of the Powers conferred by Sub-Section 3(c) of Section 3 of the Oil Industry (Development) Act, 1974(47 of 1974), the Central Government hereby appoints Shri Shrikant Madhav Vaidya, Chairman, IOCL as a member of the Oil Industry Development Board w.e.f. 01.07.2020 to 30.06.2022 or until further orders, whichever is earlier.

[F. No. G-38011/41/2016-Fin.I]

PERIN DEVI, Director

कोयला मंत्रालय

नई दिल्ली, 30 जुलाई, 2020

का.आ. 592.—कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 9 की उपधारा (1) के अधीन जारी की गई भारत सरकार के कोयला मंत्रालय की अधिसूचना का.आ. संख्यांक 08, तारीख 09 जनवरी, 2020, जो भारत के राजपत्र, भाग II, खंड 3, उप-खंड (ii), तारीख 11 जनवरी, 2020 द्वारा प्रकाशित की गई थी, उक्त अधिसूचना से संलग्न अनुसूची में वर्णित भूमि और ऐसी भूमि, (जिसे इसमें इसके पश्चात् उक्त भूमि कहा गया है), में या उस पर के सभी अधिकार, उक्त अधिनियम की धारा 10 की उप-धारा (1) के अधीन, सभी विल्लंगमों से मुक्त होकर, आत्यंतिक रूप में केन्द्रीय सरकार में निहित हो गए थे;

और, केन्द्रीय सरकार का यह समाधान हो गया है, कि महानदी कोलफील्ड्स लिमिटेड, जिला सम्बलपुर, ओडिशा (जिसे इसमें इसके पश्चात् सरकारी कंपनी कहा गया है), ऐसे निबंधनों और शर्तों का, जो केन्द्रीय सरकार इस निमित्त अधिरोपित करना उचित समझे, अनुपालन करने के लिए रजामंद है;

अत:, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 11 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि इस प्रकार निहित भूमि का माप 6.17 एकड़ (लगभग) या 2.495 हेक्टेयर (लगभग) उक्त भूमि में या उस पर के सभी अधिकार तारीख 11 जनवरी, 2020 से केन्द्रीय सरकार में इस प्रकार निहित बने रहने के बजाए, निम्नलिखित निबंधनों और शर्तों के अधीन रहते हुए, उक्त सरकारी कंपनी में निहित हो जाएंगे, अर्थात् : -

(1) सरकारी कंपनी उक्त अधिनियम के उपबंधों और अन्य सुसंगत विधियों के अधीन यथा अवधारित प्रतिकर, ब्याज, नुकसानियों आदि से संबंधित और वैसी ही मदों की बाबत् सभी संदाय करेगी;

(2) सरकारी कंपनी द्वारा शर्त (1) के अधीन, संदेय रकमों का अवधारण करने के प्रयोजन के लिए उक्त अधिनियम की धारा 14 के अधीन एक अधिकरण का गठन किया जाएगा और उक्त अधिकरण और किसी ऐसे अधिकरण की सहायता करने के लिए नियुक्त व्यक्तियों के संबंध में, उपगत सभी व्यय, उक्त सरकारी कंपनी द्वारा वहन किए जाएंगे और इसी प्रकार, निहित उक्त भूमियों में या उसपर के अधिकारों के लिए या उनके संबंध में अपील आदि विधिक कार्यवाहियों की बाबत उपगत सभी व्यय भी सरकारी कंपनी द्वारा वहन किए जाएंगे ;

(3) सरकारी कंपनी, केन्द्रीय सरकार या उसके पदधारियों की, ऐसे किसी अन्य व्यय के संबंध में क्षतिपूर्ति करेगी, जो इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के बारें में, केन्द्रीय सरकार या उसके पदधारियों द्वारा या उनके विरूद्ध किन्हीं कार्यवाहियों के संबंध में आवश्यक हो ;

(4) सरकारी कंपनी को केन्द्रीय सरकार के पूर्व अनुमोदन के बिना, उक्त भूमि में इस प्रकार निहित अधिकारों को किसी अन्य व्यक्ति को अंतरित करने की शक्ति नहीं होगी ; और

(5) सरकारी कंपनी, ऐसे निर्देशों और शर्तों का अनुपालन करेगी, जो केन्द्रीय सरकार द्वारा, जब कभी आवश्यक हो, उक्त भूमि के विशिष्ट क्षेत्रों के लिए दिए जाएं या अधिरोपित किए जाएं ।

[फा. सं. 43015/12/2018-एलए एण्ड आईआर]

राम शिरोमणि सरोज, उप सचिव

MINISTRY OF COAL

New Delhi, the 30th July, 2020

S.O. 592.—Whereas on the publication of the notification of the Government of India, Ministry of Coal number S.O. 08, dated the 9th January, 2020, published in the Gazette of India, Part II, Section 3, Sub-section (ii), dated the 11th January, 2020, issued under sub-section (1) of section 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), the land and all rights in or over the said land described in the Schedule appended to the said notification (hereinafter referred to as the said land) vested absolutely in the Central Government free from all encumbrances under sub-section (1) of section 10 of the said Act;

And whereas, the Central Government is satisfied that the Mahanadi Coalfields Limited, District Sambalpur, Odisha (hereinafter referred to as the Government Company) is willing to comply with such terms and conditions as the Central Government thinks fit to impose in this behalf;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 11 of the said Act, the Central Government hereby directs that the land measuring 6.17 acres (approximately) or 2.495 hectares (approximately) and all rights in or over the said lands so vested, shall, with effect from the 11th January, 2020 instead of continuing to so vest in the Central Government, vest in the Government Company, subject to the following terms and conditions, namely:-

(1) the Government Company shall make all payments in respect of compensation, interest, damages, etc., and the like, as determined under the provisions of the said Act and other relevant law ;

(2) a Tribunal shall be constituted under section 14 of the said Act, for the purpose of determining the amounts payable by the Government Company under condition (1) and all expenditure incurred in connection with any such Tribunal and persons appointed to assist the Tribunal shall be borne by the said Government Company and similarly, all expenditure incurred in respect of all legal proceedings like appeals, etc., for or in connection with the rights, in or over the said land, so vested, shall also be borne by the Government Company;

(3) the Government Company shall indemnify the Central Government or its officials against any other expenditure that may be necessary in connection with any proceedings by or against the Central Government or its officials, regarding the rights in or over the said lands so vested;

(4) the Government Company shall have no power to transfer the said land to any other person without the prior approval of the Central Government; and

(5) the Government Company shall comply with such directions and conditions as may be given or imposed by the Central Government for particular areas of the said lands as and when necessary.

[F. No. 43015/ 12/ 2018-LA & IR]

RAM SHIROMANI SAROJ, Dy. Secy.

नई दिल्ली, 30 जुलाई, 2020

का.आ. 593.—केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) की धारा 7 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के कोयला मंत्रालय की अधिसूचना संख्यांक का.आ. 1817, तारीख 10 अक्तूबर, 2019, जो भारत के राजपत्र, भाग II, खंड-3, उपखंड (ii), तारीख 12 अक्तूबर, 2019 में प्रकाशित की गई थी, में निम्नलिखित संशोधन करती है, अर्थात् :-

2. उक्त अधिसूचना की अनुसूची में, --

(i) "राजस्व भूमि" शीर्षक के अधीन, की सारणी में,--

(क) क्रम संख्या 1 से 7 के सामने, "कुल क्षेत्रफल (लगभग)" के अधीन, --

(क) 'हेक्टेयर' उप-शीर्षक के अधीन, अंकों '107.42, '154.96', '584.01', '16.14', '10.27', '23.01' और '5.84' के स्थान पर अंक '84.48', '199.07', '573.43' , '4.04', '3.83', '9.35' और '0.66' क्रमश: रखे जाएंगे ।

(ख) 'एकड़' उप-शीर्षक के अधीन, अंकों '265.34, '382.75', '1442.51', '39.86', '25.37', '56.83' और '14.42' के स्थान पर अंक '208.66', '491.70', '1416.36', '9.99', '9.45', '23.09' और '1.64' क्रमश: रखे जाएंगे ।

(ख) 'कुल' शीर्षक के अधीन, अंकों '901.65' और '2227.08' के स्थान पर अंक '874.86' और '2160.89' क्रमश: रखे जाएंगे ।

(ii) 'वन भूमि' शीर्षक के अधीन, की सारणी में,--

(क) क्रम संख्या 1 से 4 के सामने, 'कुल क्षेत्रफल (लगभग)' के अधीन,--

(क) 'हेक्टेयर' उप-शीर्षक के अधीन, अंकों '1.26', '119.06', '8.83', और '11.93' के स्थान पर अंक '1.18', '152.34', '8.43' और '5.94' क्रमश: रखे जाएंगे ।

(ख) 'एकड़' उप-शीर्षक के अधीन, अंकों '3.10, '294.09', '21.80' और '29.47' के स्थान पर अंक '2.91', '376.27', '20.81' और '14.66' क्रमश: रखे जाएंगे ।

(ख) 'कुल' शीर्षक के अधीन, अंकों '141.08' और '348.46' के स्थान पर अंक '167.87' और '414.65' क्रमश: रखे जाएंगे ।

(iii) 'सारांश' शीर्षक के अधीन, --

(क) क्रम संख्या (क), के अधीन 'कुल राजस्व भूमि' के सामने, अंक, शब्द और कोष्ठक '901.65' हेक्टेयर (लगभग) = 2227.08 एकड़ (लगभग)' के स्थान पर अंक, शब्द और कोष्ठक '874.86 हेक्टेयर (लगभग)= 2160.89 एकड़ (लगभग)' रखे जाएंगे ।

(ख) क्रम संख्या (ख), के अधीन 'कुल वन भूमि' के सामने, अंक, शब्द और कोष्ठक '141.08' हेक्टेयर (लगभग) = 348.46 एकड़ (लगभग)' के स्थान पर अंक, शब्द और कोष्ठक '167.87 हेक्टेयर (लगभग)= 414.65 एकड़ (लगभग)' रखे जाएंगे ।

(iv) 'अर्जित किए जाने वाले प्लाट संख्यांकों की सूची' शीर्षक के अधीन, --

(क) क्रम संख्या 1 के सामने, 'ग्राम- एटे' से संबंधित, में प्लाट संख्यांक '252, 253, 257, 258, 259, 260' लोप किया जाएगा ।

(ख) क्रम संख्या 2 के सामने, 'ग्राम – बनहरदी' से संबंधित , --

(क) प्लाट संख्यांक '702' के पश्चात् प्लाट संख्यांक '703(भाग)' अंत:स्थापित किया जाएगा ;

(ख) प्लाट संख्यांक '776' के पश्चात् प्लाट संख्यांक '777' अंत:स्थापित किया जाएगा ;

(ग) प्लाट संख्यांक '1005(भाग)' के पश्चात् प्लाट संख्यांक '1006' अंत:स्थापित किया जाएगा ;

(घ) प्लाट संख्यांक '1322' के पश्चात् प्लाट संख्यांक '1323' अंत:स्थापित किया जाएगा ;

(ङ) प्लाट संख्यांक '1445' के पश्चात् प्लाट संख्यांक '1446' अंत:स्थापित किया जाएगा ;

(च) प्लाट संख्यांक '1547(भाग)' लोप किया जाएगा ;

(छ) प्लाट संख्यांक '1589' के पश्चात् प्लाट संख्यांक '1590' अंत:स्थापित किया जाएगा ;

(ज) प्लाट संख्यांक '1643(भाग)' के पश्चात् प्लाट संख्यांक '1647(भाग)' अंत:स्थापित किया जाएगा ;

(झ) प्लाट संख्यांक '1746' के पश्चात् प्लाट संख्यांक '1747' अंत:स्थापित किया जाएगा ;

(ञ) प्लाट संख्यांक '1766' के पश्चात् प्लाट संख्यांक '1767' अंत:स्थापित किया जाएगा ;

(ट) प्लाट संख्यांक '1781' के पश्चात् प्लाट संख्यांक '1782' अंत:स्थापित किया जाएगा ;

(ठ) प्लाट संख्यांक '1796' के पश्चात् प्लाट संख्यांक '1797' अंत:स्थापित किया जाएगा ;

(ङ) प्लाट संख्यांक '1837' के पश्चात् प्लाट संख्यांक '1838' अंत:स्थापित किया जाएगा ;

(ढ) प्लाट संख्यांक '1847' के पश्चात् प्लाट संख्यांक '1848' अंत:स्थापित किया जाएगा ;

(ण) प्लाट संख्यांक '1897' के पश्चात् प्लाट संख्यांक '1898' अंत:स्थापित किया जाएगा ;

(ग) क्रम संख्या 3 के सामने, 'ग्राम – बारी' से संबंधित, --

(क) प्लाट संख्यांक '82' के पश्चात् प्लाट संख्यांक '83' अंत:स्थापित किया जाएगा ;

(ख) प्लाट संख्यांक '240' के पश्चात् प्लाट संख्यांक '241' अंत:स्थापित किया जाएगा ;

(ग) प्लाट संख्यांक '665' के पश्चात् प्लाट संख्यांक '666' अंत:स्थापित किया जाएगा ;

(घ) प्लाट संख्यांक '703' के पश्चात् प्लाट संख्यांक '704' अंत:स्थापित किया जाएगा ;

(ङ) प्लाट संख्यांक '732' के पश्चात् प्लाट संख्यांक '733' अंत:स्थापित किया जाएगा ;

(च) प्लाट संख्यांक '1312' के पश्चात् प्लाट संख्यांक '1313' अंत:स्थापित किया जाएगा ;

(छ) प्लाट संख्यांक '1374' के पश्चात् प्लाट संख्यांक '1375' अंत:स्थापित किया जाएगा ;

(ज) प्लाट संख्यांक '1426' के पश्चात् प्लाट संख्यांक '1427' अंत:स्थापित किया जाएगा ;

(झ) प्लाट संख्यांक '1565' के पश्चात् प्लाट संख्यांक '1566' अंत:स्थापित किया जाएगा ;

(ञ) प्लाट संख्यांक '1655' के पश्चात् प्लाट संख्यांक '1656' अंत:स्थापित किया जाएगा ;

(ट) प्लाट संख्यांक '1706' के पश्चात् प्लाट संख्यांक '1707' अंत:स्थापित किया जाएगा ;

(ठ) प्लाट संख्यांक '1947(भाग)' लोप किया जाएगा ;

(ड) प्लाट संख्यांक '2805' के पश्चात् प्लाट संख्यांक '2806, 2807' अंत:स्थापित किया जाएगा ;

(ढ) प्लाट संख्यांक '2827' के पश्चात् प्लाट संख्यांक '2828' अंत:स्थापित किया जाएगा ;

(घ) क्रम संख्या 6 के सामने, 'ग्राम – रामपुर' से संबंधित, प्लाट संख्यांक '1042 (भाग)' के पश्चात् प्लाट संख्यांक '1594' अंत:स्थापित किया जाएगा ;

(v) 'वन कडेस्टरल सर्वेक्षण में अर्जित किए जाने वाले प्लॉट संख्याकों की सूची' शीर्षक के अधीन, क्रम संख्यांक 3 के सामने, 'ग्राम सुरली' से संबंधित, प्लाट संख्यांक '1(भाग)' लोप किया जाएगा ।

[फा. सं. 43015/40/2017-एलए एण्ड आईआर]

राम शिरोमणि सरोज, उप सचिव

टिप्पण : मूल अधिसूचना संख्यांक का.आ. 1817, तारीख 10 अक्तूबर, 2019, भारत के राजपत्र, भाग II, खंड 3, उपखंड (ii), तारीख 12 अक्तूबर, 2019 में प्रकाशित की गई थी ।

New Delhi, the 30th July, 2020

S.O. 593.—In exercise of the powers conferred by sub- section (1) of section 7 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), the Central Government hereby makes the following amendments in the notification of the Government of India, Ministry of Coal number S.O. 1817, dated the 10th October, 2019 and published in the Gazette of India, Part II, Section 3, Sub- section (ii), dated the 12th October, 2019, namely :-

2. In the said notification in the Schedule,–

(i) under the heading " REVENUE LAND ", in the table, --

(a) against serial numbers 1 to 7, under the heading "Total area (approximately)",--

(A) under sub-heading "hectare", for the figures "107.42","154.96", "584.01", "16.14", "10.27","23.01", and "5.84", the figures "84.48", "199.07", "573.43", "4.04", "3.83","9.35" and "0.66", shall respectively be substituted;

(B) under sub-heading "acre", for the figures "265.34", "382.75", "1442.51", "39.86", "25.37", ''56.83", and "14.42", the figures "208.66", "491.70", "1416.36", "9.99", "9.45","23.09" and "1.64", shall respectively be substituted;

(b) against the heading "Total", for the figures, "901.65" and "2227.08", the figures , "874.86" and "2160.89" shall respectively be substituted;

(ii) under the heading "FOREST LAND ", in the table, --

(a) against serial numbers 1 to 4 under the heading "Total area (approximately)",--

(A) under sub-heading "hectare", for the figures "1.26", "119.06", "8.83", and "11.93",the figures "1.18","152.34", "8.43", and "5.94" shall respectively be substituted;

(B) under sub-heading "acre", for the figures "3.10", "294.09", "21.80", and "29.47", the figures "2.91", "376.27", "20.81", and "14.66" shall respectively be substituted;

(b) against the heading "Total", for the figures, "141.08" and "348.46", the figures, "167.87" and "414.65" shall respectively be substituted.;

(iii) under the heading "SUMMARY",--

(a) against serial number (A), "Total Revenue Land" for the figures , words and brackets "901.65 hectares (approximately) = 2227.08 acres (approximately)" the figures, words and brackets "874.86 hectares (approximately) = 2160.89 acres (approximately)"shall be substituted;

(b) against serial number (B), "Total Forest Land "for the figures, words and brackets "141.08 hectares (approximately) = 348.46 acres (approximately)" the figures, words and brackets "167.87 hectares (approximately) = 414.65 acres (approximately)" shall be substituted;

(iv) under the heading "LIST OF REVENUE PLOT NUMBERS TO BE ACQUIRED",--

(a) against serial number 1, relating to "Village–ATE", plot numbers "252,253,257,258,259,260" shall be omitted.

(b) against serial number 2, relating to " Village – Banhardi ",--

(A) after plot number "702", the plot number "703(Part)" shall be inserted;

(B) after plot number "776", the plot number "777" shall be inserted;

(C) after plot number "1005(Part)", the plot number "1006" shall be inserted;

(D) after plot number "1322", the plot number "1323" shall be inserted;

(E) after plot number "1445", the plot number "1446" shall be inserted;

(F) plot number "1547(Part)" shall be omitted;

(G) after plot number "1589", the plot number "1590" shall be inserted;

(H) after plot number "1643(Part)", the plot number "1647(Part)" shall be inserted;

(I) after plot number "1746", the plot number "1747" shall be inserted;

(J) after plot number "1766", the plot number "1767" shall be inserted;

(K) after plot number "1781", the plot number "1782" shall be inserted;

(L) after plot number "1796", the plot number "1797" shall be inserted;

(M) after plot number "1837", the plot number "1838" shall be inserted;

(N) after plot number "1847", the plot number "1848" shall be inserted;

(O) after plot number "1897", the plot number "1898" shall be inserted;

(c) against serial number 3, relating to "Village – Bari",-

(A) after plot number "82", the plot number "83" shall be inserted;

(B) after plot number "240", the plot number "241" shall be inserted;

(C) after plot number "665", the plot number "666" shall be inserted;

(D) after plot number "703", the plot number "704" shall be inserted;

(E) after plot number "732", the plot number "733" shall be inserted;

(F) after plot number "1312", the plot number "1313" shell be inserted;

(G) after plot number "1374", the plot number "1375" shall be inserted;

(H) after plot number "1426", the plot number "1427" shall be inserted;

(I) after plot number "1565", the plot number "1566" shall be inserted;

(J) after plot number "1655", the plot number "1656" shall be inserted;

(K) after plot number "1706", the plot number "1707" shall be inserted;

(L) plot number "1947(Part)" shall be omitted;

(M) after plot number "2805", the plot number "2806, 2807" shall be inserted;

(N) after plot number "2827", the plot number "2828" shall be inserted.

(d) gainst serial number 6, relating to "Village – Rampur", after plot number "1042(Part)" , the plot number "1594" shall be inserted;

(v) under the heading "List of Forest Cadastral Survey plot numbers to be acquired", against serial number 3, relating to "Village Surli", plot number "1(Part)" shall be omitted.

[F. No. 43015/40/2017-LA&IR]

RAM SHIROMANI SAROJ, Dy. Secy.

Note : The principal notification number S.O. 1817, dated the 10th October, 2019 was published in the Gazette of India, Part II , Section 3, Sub-section(ii), dated the 12th October, 2019.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 14 जुलाई, 2020

का.आ. 594.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक आफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ सं. 23/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.07.2020 को प्राप्त हुआ था।

[सं. एल-12012/87/2010-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 14th July, 2020

S. O. 594.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 23/2011) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Union Bank of India and their workmen, received by the Central Government on 14.07.2020.

[No. L-12012/87/2010-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 23RD JUNE, 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 23/2011

I Party	**II Party**
Sh. K.T. Shivaprakash, S/o Late K.M. Thimmaiah, No. 282, New Bazar Street, K. R. Puram, Bangalore – 560036.	The Chairman & Mg. Director, Union Bank of India, Head Office, Mangala Devi Temple Road, Mangalore – 570001.

Appearance

Advocate for I Party : Mr. S. Ramesh

Advocate for II Party : Mr. Pradeep S. Sawkar

AWARD

The Central Government vide Order No. L-12012/87/2010-IR(B-II) dated 27.05.2011 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the action of the management of Corporation Bank, Head Office, Mangalore, Karnataka in imposing the punishment of discharge from the services which shall not be a disqualification to future employment with superannuation benefits on Sh. K.T. Shivapraksh, Ex-cash Clerk w.e.f. 30.06.2009 is legal and justified? What relief the aggrieved workman is entitled to?"**

1. The 1st Party workman, former employee of erstwhile 'Corporation Bank' presently 'Union Bank of India' is challenging the Punishment Order imposed on him after certain charges came to be proved against him in the Departmental Enquiry. He had joined the service as an Attender and was promoted as a Clerk.

2. He claims that, Charge Sheet issued to him was vague, clumsy and false. He was not given fair opportunity to put forth his case. He had not admitted the charges; he had only stated that his higher officials coerced him to remit the sum of Rs. 1,000/- to the account of the complainant; no criminal case is filed against him; the finding of the Enquiry Officer is perverse; the Enquiry finding were not forwarded to him and an opportunity to show cause was not given; the Disciplinary Authority mechanically accepted the Enquiry Report and imposed the major punishment of '*discharge from service*'; he is unemployed and has no other source of income; the penalty is shockingly disproportionate; other employees who have committed similar offence or serious offence than his, were permitted to continue in service with minor penalties; he is victimised and discriminated. His two appeals are illegally rejected with closed eyes.

3. The 2nd Party denied all the allegations levelled by him in respect of procedure of Enquiry, Report of the Enquiry Officer and legality / proportionality of the Punishment Order and sought to justify the action taken against the workman.

4. In the light of the rival pleadings touching the correctness and fairness of Domestic Enquiry conducted against the workman, a Preliminary Issue was raised, tried and adjudicated, upholding the fairness of the enquiry.

5. Thereafter, the workman adduced evidence about the unemployment.

6. Both parties have submitted their respective argument and the authorities they relay. Written brief is also submitted by Sh. PSS for the 2nd Party.

7. To epitomise the allegations made against the CSE vide Charge Sheet dated 06.12.2008,

While working as Clerk at Bangalore – Mahadevapura Branch between 14.03.2008 to 02.10.2008, on 04.09.2008, the customer Sh. C. Duraikannan remitted an amount of Rs. 1,000/- in cash for credit of his Savings Bank A/c 1909. CSE issued counter foil with the "Cash Received" stamp and his initials; but he did not account the amount in the book of the Branch and thus did not credit to the Savings Bank account of Sh. Duraikannan. The mandate of Sh. Duraikannan of 05.09.2008 was returned for the reason "insufficient funds". He gave written complaint dated 15.09.2008, seeking credit of Rs. 1,000/- to his account together with the amount he suffered by way of 'return charge' debited to his account. Though searched, the Branch Officials could not find out any wrong credits and challan pertaining to Saving Bank A/c 1909 could not be traced. On 17.09.2008, the CSE credited a sum of Rs. 1,356/- to the saving account of Sh. Duraikannan on ascertaining the details from the core division, Head Office, Bangalore. It is revealed that on 04.09.2008 at 12:48 pm, he entered in the computer system, a sum of Rs. 1,000/- crediting as "Cash" to the Saving Bank Account No. 1909 of Sh. Duraikannan under batch No. 176/1 and deleted the entry in the system at 12:50 pm. His above action being prejudicial to the interest of Bank, is a gross miscount under Clause 5(j) of Memorandum of Settlement on disciplinary procedure of 10.04.2002.

8. During Domestic Enquiry, three witnesses were examined for the prosecution and 16 documents were marked for them. The CSE was enquired by the Enquiry Officer in respect of the incriminating circumstances appearing against him in the prosecution case. Written brief was submitted by both. In the beginning of the enquiry itself, 16 documents produced by the Management were taken on record asEx M-1 to Ex M-16.

9. The first witness for the Management was the Manager (Computer) I.T. Division, Head Office, Mangalore. He deposed that he has access to view the transactions carried out in core package pertaining to any core Branch transactions. He can view the transactions, deletions, modifications etc., done by Branch Personnel in their core package in their day to day transactions. He identified Ex M-13 and Ex M-14 as transaction view pertaining to CBCA Account No. 01/000074 of Sh. Maruthi Enterprises pertaining to transaction No. 2148/0039/0001 effective date 04.09.2008 – CBCA account No. 01/002158 of Sh. Prakash effective date 04.09.2008. Ex M-12 pertains to SB A/c 01/001909 of Sh. C. Duraikannan pertaining to transaction No. 2148/0176/0001 effective date 04.09.2008. Ex M-15 is the long details of the transaction of 04.09.2008 whereby cash entry for Rs. 1000/- was entered on 04.09.2008 at 12:48 pm and later modified by making the value zero at 12:50 pm, carried out by user bearing E. No. 12623.

The second witness was the Manager (Anti- Fraud section) Head Office. He identified the complaint received from the Branch along with enclosures Ex M-2 to Ex M-6 and the challans called for from the Branch as Ex M-9 to Ex M-11. Ex M-12 to 15 are the documents obtained from core Centre and the document received from the Branch is Ex M-16. He has also produced Report from the Branch (Ex M-7) that the customer has received the amount of his claim; Ex M-8 is the letter of the customer. There was no cross-examination to this witness.

The third witness was the then Senior Manager of the Branch. He narrated regarding the complaint Ex M-3 lodged by Sh. Duraikannan - the return of the ECS mandate to him on 05.09.2009 as there was no clear balance in his account – verifying slip bundle and cash scroll of the day. He deposed that all the ten entries of Rs. 1,000/- each for the day was correctly remitted to the respective accounts – Ex M-4 is the counter foil of 04.09.2008 for Rs. 1,000/- in respect of SB A/c No. 1909. The witness identifies that the initials borne on Ex M-4 are by CSE in the capacity of Cashier. The challans Ex M-9 to Ex M-11 bear the signature of CSE. Ex M-5 is the letter by the CSE seeking the CCTV camera footage. The CCTV footage dated 04.09.2008 between 12:30 pm to 1:00 pm was sent to Head Office for their reference. During the cross examination, the witness stated that during his tenure there was no other complaint against the CSE.

10. During his clarification to the query of the Enquiry Officer, CSE denied all the incriminating circumstances appearing against him.

He further stated that, on 04.09.2008, Sh. Duraikannan enquired about the balance in his account and he advised him to enquire with the pass book entry and get his pass book updated. The customer got angry and left the Branch – the customer's cheque appears to have been returned for want of funds – frustrated by the same, he gave false complaint. The Manager has not shown him the relevant CCTV footage.

In the body of his Report, the Enquiry Officer while appreciating the deposition of MW3, recorded that his evidence remains unshaken and assuming that the CSE made good the amount, still the Charges are proved.

11. Sh. SR, Learned Counsel for the 1st Party submits that, the 1st Party workman was initially an Attender and promoted to the cadre of Cashier. He had no knowledge of handing the computer. During the enquiry, he had sought for relevant CCTV footage but the same was not furnished to him. While the alleged transaction is on 04.09.2008, complaint is lodged on 15.09.2008. The initial found on the counter foil of 04.09.2008 is not proved by the Bank. He disputes the said initial. Expert opinion ought to have been obtained before holding him liable for the transaction in question. It was a stray incident and the amount involved was Rs. 1,000/-. He has no past records to his credit.

Learned Counsel has further placed his reliance on the Judgment of the Apex Court reported in 1975 LLJ Page 262 in the matter of L. Michael and others vs. M/s Johnson Pumps India Ltd. It was the Judgement by the larger Bench of the Apex Court laying the principles as to when and how the Doctrine of *'loss of confidence' may be involved*. Relevant lines from Para 21 of the Judgment read thus,

> *"21. Before we conclude we would like to add that an employer who believes or suspects that his employee, particularly one holding a position of confidence, has betrayed that confidence, can, if the conditions and terms of the employment permit, terminate his employment and discharge him without any stigma attaching to the discharge. But such belief or suspicion of the employer should not be a mere whim or fancy. It should be bona fide and reasonable. It must rest on some tangible basis and the power has to be exercised by the employer objectively, in good faith, which means honestly with due care and' prudence. If the exercise of such power is challenged on the ground of being colourable or mala fide or an act of victimisation or unfair labour practice, the employer must disclose to the Court the grounds of his impugned action so that the same may be tested judicially."*

12. Learned Counsel for the 2nd Party has taken enough of strain to drafting his written argument and additional written argument (after 1st Party addressed his argument).

The quintessence of the submission for the Management is, that, the 1st Party during his general questioning admitted that Ex M-9 to Ex M-11 bears his initial and the initial on Ex M-4 resembles his initials. In any transaction the system requires an entry and authorisation. MW-1 / the Manager (Computer), I.T. Division has stated that the 1st Party had made the entry for transaction and modified the transaction before it's authorisation. From Ex M-12 it is clear that, the initial entry and subsequent modification are made by the employee having the employee No. 12623 at 12:48 pm and 12:50 pm respectively, said employee number is that of 1st Party workman. On the top of Ex M-12, the account number and the name of the account holder appears as SB 01/001909 - C Duraikannan. That apart, he has reimbursed the amount on 17.09.2008 before issue of Charge Sheet. He had contended before the Disciplinary Authority during personal hearing that, though he had not received the amount of Rs. 1,000/- his Higher Officials by threat, force and undue influence made him to remit the sum of Rs. 1,000/- to the Bank. Said contention is false, having been involved in the misconduct, he had no alternative but to make goof the loss. But he had not urged about the exertion of threat, force etc., before the Appellate Authority.

Reliance is placed by the 2nd Party on a number of precedents to impress on the Court that when the misconduct is proved during the enquiry, the punishment cannot be unsettled in an Industrial adjudication. One among them is the Judgment reported in 1975-I LLJ-262 in the matter of L. Michael and another Vs. Johnson Pumps India Ltd., which meticulously dealt as to when and how the Doctrine of "*loss of confidence*" can be invoked.

13. In the back drop of the above, let us examine whether the findings of the Enquiry Officer is based on proper and judicious appreciation of the evidentiary material placed before him.

It was not disputed that 1st Party had worked as Cashier on 04.09.2008. Though, the Complainant could not be examined during the enquiry, the counter foil of the challan dated 04.09.2008 bearing the *"cash received"* seal of the Bank and the signature of the account holder and alleged initial of the CSE was marked in evidence as Ex M-4. The Management had produced Ex M-10 and Ex M-11 which bears the initial of the 1st

Party while receiving the amount by the account holders while working as the Cashier during the relevant period. They were produced to tally admitted initial with the disputed initial on EX M-4.

For a naked eye, these initials appear to be authored by the same person i.e., none other than CSE himself. The then Manager of the Bank has also identified said initial as that of the 1st Party workman. Though he had opportunity to adduce rebuttal evidence and deny these initials, did not opt to do so. Thus, it probabalises the counter foil of the challan bears the initial of the 1st Party acknowledging the receipt of Rs. 1,000/-. It is also an admitted fact that, on that day Rs. 1,000/- was not credited to the account of account holder. There is also supporting evidence led through Manager (Computer) that, the 1st Party entered the transaction at 12:48 pm and in two minutes i.e., at 12:50 pm modified to the value zero. Subsequently, he has remitted Rs. 1,000/- to the account of the account holder along with loss claimed by the account holder in his complaint. On the basis of the above evidence, the Enquiry Officer has recorded that,

> *"... hold the CSO guilty of charges / allegations levelled against him in terms of letter of charge bearing No. PAD/DISC/345/08/2039/2008 dated 06.12.2008".*

14. It is evident that, in the absence of direct eye witness evidence, the Enquiry Officer acted upon the above circumstantial evidence to reach his finding. But I am unable to endorse his finding for the fore going reasons –

As per Para 4 of the Charge Sheet, on receiving the complaint on 15.09.2008 seeking credit of Rs. 1,000/- to his Bank Account, the Bank Manager enquired with the CSE and he informed that on 04.09.2008, while tallying he did not find any excess cash; the Branch Officials on verification either could not find out any wrong credit or the challan pertaining to SB A/c No. 1909.

In respect of the incident, the then Manager of the Branch / MW-3 submitted his Report (marked as Ex M-1 during the enquiry) dated 17.09.2008 wherein, he has stated that,

> "*the credit entries of Rs. 1,000/- of 04.09.2008 are found to be in order as such there are no wrong credit entries. The captioned challan of Rs. 1,000/- said to have been tender by the customer on 04.09.2008 is missing / not traceable.*
>
> *On enquiry with the cashier, he submitted a letter dated 16.09.2008 requesting for video tape recorded back up of 04.09.2008 of surveillance camera / CCTV. He has informed that he did not end up with excess cash of RS. 1,000/- on 04.09.2008....*"

Thus, it is obvious that, there was some missing link between the 1st Party entering the transaction at 12:48 pm and deleting the same at 12:50 pm.

Ex M-2 was marked through the Manager (Anti-Fraud) section / MW-2 as an enclosure to the compliant Ex M-1. As per Ex M-2 among other things the Bank Manager at Para 11 reported that,

> "*the Cashier was asked to give an explanation. He had submitted a letter on 16.09.2008 saying that there was no excess cash on 04.09.2008 and therefore he wants to see the video backup of CCTV installed in the cash counter".*

MW-3 / the then Branch Manager during his deposition identified a letter given by CSE on 16.09.2008 which was marked as Ex M-5. Through this letter the CSE requested him to accommodate to peruse the camera relay pertaining to transaction of 04.09.2008. MW-2 also stated that, "*they had taken the CCTV footage pertaining to 04.09.2008 between 12:30 pm to 1:00 pm and sent it to Head Office for their reference" (*But MW-1 who is from I.T. Division, Head Office have not stated anything about perusing the CCTV footage).

During the cross examination, MW-2 stated that he has shown the video clippings of CCTV at the Branch relating to the said incident of the day to the CSE. He further ascertained that the video clipping was shown in the presence of two other staff members. If that is so, why there was no mentioning of the relevant CCTV footage, playing the same to the CSE in the presence of two witnesses in the Charge Sheet? It is crucial to know what really transpired in the cash counter between 12:48 and 12:50 pm in the cash cabin of the CSE on 04.09.2008. Since, the complainant himself did not turn up and the 1st Party since denied the transaction, the CCTV footage was the only material evidence which could throw light on the allegations of Charge Sheet at Para 7 which reads thus,

> *"7. That these facts and circumstances indicate that on 04.09.2008 you accepted a sum of Rs. 1,000/- tendered by Sh. Duraikannan for credit of his Savings Bank No. 1909, issued counter foil to the customer, whereas you did not amount for the same in the books of Bank, misappropriated the above sum of Rs. 1,000/- tendered by Sh. Duraikannan and reimbursed the same on 07.09.2008."*

Since, there is no direct evidence by any eye witnesses who had seen the CSE receiving the amount they could not have proved the said fact without producing the CCTV footage. The 2nd Party though is in possession of said footage, has suppressed the same for the reasons not explained. The non-production of the relevant CCTV footage has created a vacuum in the evidence of the prosecution. Though, the counter challan bears the cash paid seal of the Bank and the initial of the 1st Party, that itself is not sufficient to presume that he received the amount form the customer. The allegation of misappropriation can be inferred only if the prosecution successfully links the chain of events. To infer the culpability on the part of the CSE, it is required to see the surrounding circumstance. The SB account Pass Book of the customer is marked as Ex M-16 pertaining to his transaction between 09.09.2008 to 06.12.2008. It is an operative account with regular debits and credits maintained since 16.12.2015. The amount involved is Rs. 1,000/-, a sumptuous amount, having regard to the balance maintained by the account holder.

The 1st Party would not have dared to hood wink the customer after receiving the amount. Being an employee of the Bank, he must be knowing the consequences of stealing a customer's money during the course of his official duty. There may be very many possibilities in CSE deleting the transaction immediately after it was entered in the system. The incident of 04.09.2008 was called in question by the account holder only on 15.09.2008. In his complaint, the complainant did not allege any fraud or misappropriation. The reasons assigned by him was, he has a vehicle loan account which was to be cleared on 05.09.2008; because of the less balance in his SB Account, he paid Rs. 1,000/- on 04.09.2008 to avoid the penalty being imposed by the ICICI Bank; due to negligence of staff he is charged Rs. 56/- towards return charges and Rs. 1,000/- is not credited to his account. The account holder also requested that this should not occur next time and the penalty payment should be borne by the Bank.

15. It is not clear whether said account holder had personally come to the counter to credit the amount or through a third person he attempted to pay the amount; it is also vital missing link in the chain of events. In his letter dated 19.09.2008 he had reported to the Bank that, the Bank has taken his previous letter on priority basis and the CSE remitted Rs. 1,000/- + Rs. 356/- the penalty amount to his account on 17.09.2008. Now there is no problem in his account.

Added to that, there is no previous history record to the credit of the CSE. He is a Cashier promoted from the sub-staff grade. MW-3 in his cross examination admits that, while he was working in the Branch there were no complaints against him.

16. Above all would suggest that, there was no culpability on the part of the CSE to steal the customer's money. Two incriminating circumstances in the prosecution evidence is, CSE's initial is found on the challan / EX M-4 and he has credited the amount to the customer's account. I am not agreeable to accept the said proposition. An Official if credits the amount lost during the course of his official duty apprehending serious consequences that should not be inferred as admission of misconduct. One should understand the plight of a workman who is kept under suspension on the allegation of missing of Rs. 1,000/- and who possibly would lose his job in the half way of his carrier. If he has credited the amount thinking that the matter would be settled, it is not permissible to attribute 'admission of guilt' by him.

Throughout i.e., Enquiry Report, Punishment Order of the Disciplinary Authority and Order of the Appellate Authority did not approach the evidentiary material from a proper prospective. They are all non-speaking and mechanical without independent application of mind. Of Course, the workman could not give a plausible explanation to the entry made by him in his system and the cash paid challan bearing his initial marked during the enquiry. Assuming the same as a short fall in due performance of duty, it does not amount to a gross misconduct warranting his discharge from service.

Though he was given superannuation benefits without disqualification from future employment, that fails to compensate the sufferings undergone by him due to the Punishment Order and the career he has lost before superannuation. For the above reasons, I hold that the Punishment Order is excessive viz a viz the allegations held proved during the enquiry. That drives me to hold, the Punishment Order imposed is not legal and warrants interference of this Tribunal under Sec 11-A of 'the Act'.

17. That takes us to the question of relief that can be awarded in his favour. He has stated before this Tribunal that he is unemployed and over aged for any new appointment. As of now, he is aged about 49 years. In the given circumstance, reinstatement into original post with continuity of service without back wages would suffice the ends of justice being met.

AWARD

The reference is accepted.

The action of the 2nd Party / erstwhile 'Corporation Bank' presently 'Union Bank of India', in imposing punishment of discharge from the services of Sh. K.T. Shivaprakash, Ex-cash Clerk is not legal and not justified.

The 2nd Party is directed to reinstate the 1st Party workman / Sh. K.T. Shivaprakash into his original post with continuity of service without back wages.

(Dictated to o/s LDC, transcribed by her, corrected and signed by me on 23rd June, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 14 जुलाई, 2020

का.आ. 595.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक आफ बडौदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ सं. 28/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.07.2020 को प्राप्त हुआ था।

[सं. एल-12025/5/2016-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 14th July, 2020

S. O. 595.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 28/2016) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda, and their workmen, received by the Central Government on 14.07.2020.

[No. L-12025/5/2016-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 19TH JUNE, 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 28/2016

I Party

Sh. S. S. Shetty,
Regional Office,
Vijaya Bank Workers' Organisation,
Hubli Regional Committee,
122, 1st Floor, 'Srinath Complex',
New Cotton Market,
Hubli - 580029.

II Party

The General Manager (PA & PD),
Bank of Baroda,
Personnel Department,
Head Office, 41/2, M. G. Road,
Bangalore - 560001.

Appearance

Advocate for I Party : Self

Advocate for II Party : Mr. P. Udayashankar Rai

AWARD

The Central Government vide Order No. L-12025/5/2016-IR(B-II) dated 30.08.2016 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the action of the management of Vijaya Bank in imposing three punishments for one charge on Sh. Veerbassappa B S, Sweeper, is correct or not? If not to what relief the workman is entitled to?"

1. The dispute is raised by 1st Party Trade Union.

The cause of the workman / employee of the 2nd Party who suffered punishment consequent upon certain charge came to be proved against him in the Departmental Enquiry, is espoused by the 1st Party Union.

2. The 1st Party workman is a Sweeper and was issued charge sheet dated 10.09.2013 followed by Domestic Enquiry which culminated in the punishment order. The Disciplinary Authority proposed the punishment of "*reduction to a lower stage in the time scale of pay by two stages for a period of five years with cumulative effect.*" Subsequently vide order dated 14.08.2014 imposed the punishment. The 1st party Union claims that the workman had not committed any misconduct as alleged, and further challenges the fairness of the Investigation, Investigation Report and the legality of the punishment order.

3. The 2nd Party has contested the claim, it is contended while working as full time Sweeper at Lamington Road Branch, Hubli he was kept under suspension vide order dated 24.11.2012 for attempting to fraudulently misuse the Debit Card of Sh. K Nagaraj Rao, Assistant Manager of the Branch. He was issued charge sheet dated 10.09.2013, he submitted his reply denying the charges. Disciplinary Authority decided to conduct Departmental Enquiry, 1st Party voluntarily admitted his guilt vide letter dated 03.12.2013 and requested to treat his case under clause 19.12(e) of Bipartite Settlement; the Disciplinary Authority rejected his request and decided to conduct Departmental Enquiry. He participated in the enquiry along with his representative. He has cross examined the management witness. The Enquiry Officer submitted his report dated 17.03.2014 holding the charges as proved; Enquiry Report was forwarded to him and he submitted his representation. The Disciplinary Authority vide letter dated 21.07.2014 proposed to impose the punishment of *reduction to lower stage in the time scale of pay by two stages for a period of five years with cumulative effect* and advised him to submit his representation on the proposed punishment within 7 days but he did not submit any. Disciplinary Authority on careful consideration of the relevant records, enquiry finding, his representation to the enquiry finding and in the facts and circumstance imposed the punishment proposed vide order dated 14.08.2014; the consequence of the said punishment were clearly mentioned in the final order. There is no violation of principles of natural justice.

4. After filing the claim statement, the 1st Party has not turned up to pursue the claim.

5. On the rival pleadings a Preliminary Issue touching the fairness and correctness of the Domestic Enquiry was framed.

2nd party produced the relevant records as Ex M-1 to Ex M-15 and the Preliminary Issue is answered in the affirmative vide order dated 28.08.2019.

6. The allegation against the workman was that on 24.11.2012 he made attempt to misuse the Debit Card belonging to Sh. K Nagaraj Rao, Assistant Manager of the Branch by trying to purchase jewels from M/s. Maya Jewellers on 19.11.2012. In his reply to the charge sheet the CSE contended that while sweeping he found one ATM Card and thought it was his card; he presented the Card to the Jewellery Shop to purchase jewels, the Shop owner asked to present his identity proof, then he came to know that it was the Card of Sh. Nagaraja Rao, Asst. Manager hence he did not purchase the jewel. He further denied the charge that the acts alleged amounts to gross misconduct under sub clause (j) of clause 5 of Memorandum of Settlement on Disciplinary Action procedure for the workmen dated 10.04.2002. He emphasised that his act does not involve the Bank in serious loss or not caused prejudice to the interest of the Bank.

7. During the enquiry the management examined four witnesses.

The first one was the Chief Manager at the Head Office, who had reported the incident to the Regional Office. There was no suggestion to the witness that CSE has not committed misconduct as alleged. Instead the suggestion was "The CSE, FTS an uneducated man has committed a mistake unknowingly....?"

The second witness was Sh. K Nagaraj Rao, whose Debit Card CSE Attempted to misuse. During his cross examination it was suggested "Because of your negligence only this case happened."

The third witness was the Investigating Officer. On receiving Report from the Branch as per the instruction of AGM, RO she had conducted quick investigation.

The fourth witness was Peon of the Branch who accompanied MW-2 to the Jeweller Shop on 19.11.2012.

8. The Enquiry Officer on appreciation of the evidence of the witnesses viz a viz the defence raised for the CSE found that he made an attempt to unauthorisedly and fraudulently use the ATM / Debit Card pertaining to Sh. Nagaraj Rao (9335) Asst. Manager towards purchase of jewels from M/s. Maya Jewellers, Hubli; however, could not get the jewels from the shop. The Staff of Maya jewellers had enquired the name of CSE, he told Veeranna. Since, the name on the Card was Nagaraj Rao, they suspected his movement and insisted the identity proof of the CSE. By their said act, the CSE was annoyed and asked for whatever jewels eligible for Rs. 24,431/-, but the sales man refused to deliver the jewels without ID proof. The CSE left the shop taking the card and telling them that he will come back tomorrow.

9. The Enquiry Officer on the above finding held that "the act of CSE in abusing the trust and confidence reposed on him as an employee of the Bank and this act prejudicial to the interest of the Bank and thus, constitutes gross misconduct under sub clause (j) of clause 5 of Memorandum of Settlement on Disciplinary Action for Workmen dated 10.04.2002. Thus, the charge was held proved.

10. In his remarks to the Enquiry Report, the CSE contended that the enquiry finding is perverse and the Bank funds are not involved etc.

11. On considering his contention the Disciplinary Authority proposed the punishment of "**reduction to a lower stage in the time scale of pay by two stages for a period of five years with cumulative effect**". After giving the opportunity to the workman very same proposed punishment is confirmed vide order dated 14.08.2014.

12. The finding of the Enquiry Officer flows from the oral and documentary evidence placed before him and is neither arbitrary nor perverse. The punishment order is well reasoned and appropriate to the nature of the misconduct proved. The Appellate Authority has rejected his Appeal on consideration of entire records viz. a viz. his grounds of Appeal.

13. The 1st party in his claim statement has alleged that the punishment proposed was further enhanced but this contention is baseless. What punishment was proposed vide order dated 23.07.2014 was confirmed.

14. For the observation supra, I hold it is not an Industrial Dispute warranting the jurisdiction of this Tribunal under Sec 11-A of 'the Act'.

AWARD

The Reference is rejected.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 19th June, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 14 जुलाई, 2020

का.आ. 596.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक आफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ सं. 27/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.07.2020 को प्राप्त हुआ था।

[सं. एल-12012/21/2006-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 14th July, 2020

S. O. 596.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 27/2006) of the *Cent.Govt.Indus.Tribunal-cum-Labour* Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Union Bank of India and their workmen, received by the Central Government on 14.07.2020.

[No. L-12012/21/2006-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 24TH JUNE, 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 27/2006

I Party	**II Party**
Sh. M.H. Sumesh, S/o Late Huthaiah, R/o Balamuri Ganapathy Temple, 2nd Block, Nagegowda Extension, Kushalnagar – 571223.	The Chairman-cum-Managing Director, Union Bank of India, Head Office, Mangaladevi Temple Road, Mangalore – 575001

Appearance

Advocate for I Party : Mr. N.M. Bhat

Advocate for II Party : Mr. Pradeep S. Sawkar

AWARD

The Central Government vide Order No. L-12012/21/2006-IR(B-II) dated 29.06.2006 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the action of the management of Corporation Bank in imposing the punishment of dismissal vide order dated 11.07.2002 on Sh. M.H. Sumesh is legal and justified? If not, to what relief the workman is entitled?"**

1. The 1st Party workman has raised the dispute challenging the punishment imposed on him by his former employer / Corporation Bank presently Union Bank of India as a measure of disciplinary action after the charges against him came to be proved in the Departmental enquiry. He was initially appointed as Attender and was promoted as Clerk and was dismissed on 11.07.2002.

He alleges that, he was falsely victimised and penalised, the charges made against him was all false and baseless; he was not permitted to take the assistance of Advocate; it was a farce enquiry without providing reasonable opportunity; the Enquiry Officer recorded perverse finding and the Disciplinary Authority accepted the same without application of mind and the Appellate Authority rejected his appeal with a closed mind.

He further claims that, ever since his dismissal he is unemployed and facing financial hardship.

2. The 2nd Party in their counter statement refuted all his allegations and justified the actions taken against him.

3. Vide order dated 28.06.2019, the validity of the Domestic enquiry conducted against him is upheld as fair and proper.

4. Both parties have submitted their argument.

5. The allegation against the workman as per the charge sheet dated 14.08.1999 was to the effect that while working as Clerk at Somwarpet Branch of 2nd Party between 29.01.1998 to 24.02.1999:

(1.1) He opened a Savings Bank A/c No. 10192 on 29.01.1998. The closing balance in his account was Rs. 45.22(Cr.). He fraudulently withdrew an amount of Rs. 2,500/- in cash through withdrawal slip No. 008755 dated 09.06.1998, by prefixing numeral '3' to the credit entry dated 08.06.1998 for Rs. 640/- and numeral '30' to the closing balance dated 08.06.1998 and inflated the figures in the folio of the ledger by Rs. 3,000/-.

(1.2) On 11.06.1998, he fraudulently withdrew an amount Rs. 500/- in cash through the withdrawal slip 008781 dated 11.06.1998

(1.3) He deposited Rs. 3,000/- on 17.07.1998, closed the Savings Bank account, transferred the balance of Rs. 5.42 to another Savings Bank A/c No. 10330 opened by him on the same day.

(1.4) To conceal the above fraudulent acts, he tampered with / caused destruction of the ledger sheet of the relating Savings banks account, subsidiary sheet of staff ledger, made alteration in the figures in the SB control register pertaining to the dates 9.06.1998 to 11.06.1998.

(2.0) He closed the A/c No. 10192, opened the new SB A/c 10330 on 17.07.1998 and transferred the balance of Rs. 5.42 to the new account; said account was maintained in the staff SB ledger and his monthly salary was being credited to the said account.

(2.1) On 08.08.1998, the opening balance in his account was Rs. 3,007.30/- an amount of Rs. 640/- was credited to his account through mail transfer he withdrew Rs. 2,500/- in cash through withdrawal slip and his closing balance was Rs. 1,147.30/-. Between 11.08.1998 and 17.08.1998, there were two cash transactions for Rs. 1,140/- and the balance on 17.08.1998 was Rs. 7.30/- in his account. On 24.08.1998, an amount of Rs 450/- was credited to his account through money transfer and the closing balance was Rs. 457.30(Cr). He fraudulently withdrew and amount of Rs. 1,450/- in cash through withdrawal slip dated 24.08.1998 by prefixing numeral '1' to the credit entry for Rs. 640/- dated 08.08.1998 and prefixing the numeral '100' to the closing balance of Rs. 7.30 dated 17.08.1998 and also numeral '1' to the closing balance of 457.30 dated 24.08.1998 and inflated the figures in the folio of ledger by 'Rs. 1000/-'.

(2.2) On 02.09.1998, he remitted Rs. 1,000/- in cash to the account and nullified the effect of the inflated amount in the ledger folio on 08.09.1998 by altering the entries.

(2.3) On 03.10.1998, the balance in his account 10330 was Rs. 210.11/-; he fraudulently withdrew Rs. 10,000/- through withdrawal slip by tampering the entries in the ledger and inflated the figure by Rs. 10,000/-.

(2.4) On 28.11.1998, he remitted Rs. 10,000/- in cash to above account and altered the ledger entries and further reduced the closing balance from Rs. 1,720/- to Rs. 720/-.

(2.5) He tampered with the subsidiary sheets of staff ledgers.

(3.0) On 29.05.1998, he opened an SB A/c 10305 in the name of his wife Smt. M.S. Gowramma with an initial deposit of Rs.101/-. He forged the signature of his wife in the account opening forum and the specimen signature card besides introducing the account.

(3.1) On 30.06.1998, he remitted Rs. 60/- to the said account and the closing balance was Rs. 81/-. As against the closing balance of Rs. 81/- between 04.07.1988 and 14.07.1998, he altered the credit entry and withdrew an amount of Rs. 28,060/- on even dates.

(3.2) On 17.08.1998, he closed the above account.

(3.3) To conceal the above acts, he destroyed the balancing books of relating period pertaining to SB Ledger No. 20 in which above account was maintained.

(3.4) He is due for Rs. 28,000/- towards the misappropriation by him.

(4.0) He opened a joint Savings Bank account on 20.03.1998 in the name of himself and his son Sh. Ravi kumar with initial deposit of Rs. 2,001/-. He introduced the account, incorporated the mandate of operation "by anyone". In the account opening form and in the signature card he alone signed.

(4.1) Between 22.08.1998 and 16.01.1999, as against the amount of Rs. 24,050/- credited to the account, he has fraudulently withdrawn Rs. 1,40,600/- from the account by manipulating the credit entries and closing balances from time to time.

(4.2) He closed the above account on 19.01.1999; transferred Rs. 10,209/- after carrying out manipulation of SB A/c 10464.

(4.3) Between 22.08.1998 and 19.01.1999, he misappropriated an amount Rs. 1,26,700/- by fraudulent withdrawals.

(4.4) He tampered with / caused destruction to the relevant ledger folio of SB A/c and the balancing books of the relating ledger for the above period.

(4.5) He is yet to make good an amount of Rs. 1,26,700/- misappropriated by him.

The above acts amount to gross misconduct under clause 19.5 (j) of the Bi-partite Settlement.

6. During the enquiry, nine witnesses were examined for the management and 365 documents were marked for them. The statement of the 1st Party workman in response to the incriminating circumstance appearing against him was recorded by the Enquiry Officer. The defence opted not to adduce evidence or produce document, however, they filed their written brief. On over all evaluation of the evidence, the Enquiry Officer recorded that the Charge 1 to 4 are proved.

The 1st Party submitted his remarks to the Enquiry Report to the Disciplinary Authority. The Disciplinary Authority on appraisal of evidence concurred with the Enquiry Officer and proposed the punishment of dismissal from service of the Bank. A show cause notice was issued to the 1st Party calling upon on him to show cause as to why proposed punishment should not be imposed on him. The 1st Party submitted his remarks to the show cause notice; he was given personal hearing before imposing the punishment.

But not convinced by his submission, the Disciplinary Authority proceeded to confirm the punishment of dismissal which was already proposed, same was the result before the Appellate Authority also.

7. In the written brief submitted by the 1st Party, he has reiterated his defence against the Domestic Enquiry. As such while adjudicating the Preliminary Issue on the fairness of the Domestic Enquiry, the issue was answered affirmatively keeping open all the legal contention to be urged at the time of final argument. In the body of the Order it was observed that, "Marking of the documents without examining it's authors is a legal question which the 1st Party can urge at the time of the final argument on merits".

8. His grievance regarding non-payment of subsistence allowances, conducting the enquiry in English language despite his objection etc., are considered while answering Issue No.1. Now he is emphasising on the fact that, the criminal prosecution on the same set of allegations is concluded by acquitting him of the charges under Section 409 and 468 of IPC.

Learned counsel has placed reliance on the Judgement of the Apex Court reported in AIR 1999 SC 1416 in the matter of M. Paul Anthony vs. Bharath Gold Mines Ltd. In the said case, same set of witnesses were examined before the Domestic Enquiry and also in the criminal case but the Criminal Court rejected the entire story of the prosecution which was contrary to the finding of the Enquiry Officer. The Apex Court observed that,

"……it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex-parte departmental proceedings, to stand."

The 1st Party is looking for the same benefit in his case also. He has produced Photostat copy of the Judgement passed in the criminal case and copies of the oral evidence of the witnesses recorded in the criminal case. But his effort do not fetch any benefit for him for the reason that, the Domestic Enquiry in this case was not held ex-parte and he has cross examined all the witnesses. The Investigating Officer of the Domestic Enquiry is the Official of the Bank and the Investigating Officer in the criminal case is a Police Official. It is the settled position of Law that acquittal from criminal case will not automatically absolve a CSE from the charges in a Departmental proceeding. (Vide Judgment of the Apex Court Suresh Pathrella vs. Oriental Bank of Commerce reported in LAWS (SC)-2006-10-92 DD 19.10.2006). It may be noticed from the copy of the Judgment in the criminal case, the Court acquitted him of the charges with the observation - the prosecution had failed to bring home the guilt of accused for the offense alleged beyond all reasonable doubt. The parameter for appreciation of evidence in a Departmental Enquiry is on the yardstick of 'Preponderance of Probabilities'. The probing Authority draws it's inference on given set of facts at it's disposal.

9. The next limb of defence is, all 365 documents were marked through MW-1 without examining their authors; none of the witnesses identified the documents and consent of the 1st Party was not taken before marking the documents as exhibits. On an examination of the documents marked in evidence by the 2nd Party, they are all the official documents which have come into existence during the day to day transaction of the Bank and destroyed documents are reconstructed during investigation on the basis of official documents available in

the Bank. A favourable presumption is available under Sec 114 (e) of the Evidence Act, in favour of the due performance of Official and judicial functioning.

During the cross examination of the witnesses, the CSE was not able to destroy the veracity of those documents. He has not adduced evidence disputing these documents.

10. He was not Charge Sheeted on the basis of any individual's complaint but on the complaint of the Regional Office, Hassan annexing the letter submitted by the Somwarpet Branch Manager, on noticing fictitious credit entry in his account. The Domestic Enquiry records would show that, with his consent those documents were marked. Without objecting for marking of the documents during the trial; now, he cannot grumble that his consent ought to have been taken before marking of the documents. Another-fold of the defence is,

"during course of enquiry, the Enquiry Officer has cross examined the 1st Party workman thereby, he helped the Management to bring home the guilt."

11. It transpires from the enquiry record that five questions that were put to him by the Enquiry Officer, were all the Charge Sheet allegations only.

For the 1st question pertaining to manipulating the A/c No. 10192 and withdrawing Rs. 2,500/- in cash on 09.06.1998 and manipulating credit entry.

His answer was -

"The Passing Authority Sh. Pundalik Bhat instigated me to do so, I did it."

With regard to the question No. 2 / regarding 2nd charge – there was an entry from Kushalnagar to his SB Account 10330 for Rs. 640/- on 08.08.1998 as against which he withdrew Rs. 2,500/- on 08.08.1998 and manipulated in the account by adding some figures,

his submission was,

"*I have not manipulated the account. It is a fact that I have withdrawn an amount of Rs. 2,500/- on that day."*

With regard to question No. 3 - about his fraudulent withdrawal of the amounts in respect of the SB Account 10305 on the even days detailed therein.

His answer was,

"*I have not withdrawn these amounts as I have not signed the cheques."*

With regard to the question No.4 - pertaining to the withdrawal of Rs. 1,40,600/- between 22.08.1998 and 16.01.1999 in respect of SB AC 10248 his answer was,

"It is correct that, I have withdrawn the amount as per the idea given by Sh. Pundalik Bhat."

With regard to question No. 5 - in respect of manipulations in account and spoiling the records his answer was,

"Yes, I have done the same as per the idea given by Sh. Pundalik Bhat."

However, he stated that,

"Whatever difference that have taken place in the accounts, Sh. Pundalik Bhat was used to pass as he was officiating and I have not officiated during that period. I have not passed any cheque nor I opened any account without the knowledge of the Supervisory Officer. Whatever happened was within the knowledge of Sh. Pundalik Bhat."

12. As could be made out from the Punishment Order dated 11.07.2002, the Disciplinary Authority was convinced with the Enquiry Report holding the employee guilty of all the allegations / charges and copy of the same was marked to the 1st Party. He submitted his remarks vide letter dated 02.09.2002 that, no action is initiated against Sh. Pundalik Bhat for his role in the matter; all the cheques / withdrawal slips through which amounts were fraudulently withdrawn have been passed for payment by Sh. Pundalik Bhat and not by him; Sh. Pundalik Bhat has certified that balancing have been tallied and he has also closed his (employees SB Account) without obtaining any letter from him for the same. Sh. Pundalik Bhat has caused destruction of Banks records. Therefore, action has to be initiated against Sh. Pundalik Bhat and the punishment proposed to be imposed on him (employee) be reduced etc.

In this regard the Disciplinary Authority observed,

"... Procedural lapses if any on the part of the concerned supervisory officials will not absolve the employee of the fraudulent acts committed by him and also will not mitigate the gravity of the misconduct committed by the employee...."

The lapses now he is pointing out in respect of Domestic Enquiry are all dealt by me while adjudicating the Preliminary Issue. What remains for consideration at this stage is, whether the evidence placed before the Enquiry Officer plausibly and sufficiently makes out a case against him and whether the enquiry finding is arbitrary and perverse?

13. In his written submission without pointing as to whether the appreciation of evidence by the Enquiry Officer was arbitrary and irregular, he is harping again on the very same objections which he has raised before this Tribunal during the Preliminary Enquiry and denying the charges without building a strong defence during the Domestic Enquiry against the charges.

The Authorities relied by him in respect of non-payment of subsistence allowance, non-examination of the authors of the documents marked in the evidence, consequence of acquittal in the Criminal Case, the effect of Enquiry Officer cross examining the CSE, non-supply of written brief which was filed by the 2nd Party are of no avail for him at this stage.

14. Vide proceedings dated 11.01.2002, after closure of the cross-examination of Management witnesses and questioning the CSE on the incriminating circumstances, the Presenting Officer submitted that he does not wish to give written brief in the matter. The 1st Party was directed by the Enquiry Officer to submit his written brief on or before 02.02.2002, having not submitted the written brief. Since the Presenting Officer himself had opted not to submit the written brief.

That being so, where is the question of supplying the copy of Presenting Officer's written brief to him?

15. I have perused the enquiry finding viz a viz the evidence brought on record.

Investigation was carried out jointly by the Officer of the Vigilance Cell / MW-1 along with Officer of the Anti-fraud Section / MW-2.

MW-1 narrated about the investigation carried out by him at Somwarpet Branch. He produced the proceedings drawn by him during the course of investigation and the statements of the witnesses recorded as Ex M-351 and Ex M-352; he further produced certified copy of the documents connected to the case Ex M-355 to Ex M-363. During the course of investigation the witness had noticed that certain documents were missing and in this regard the Branch Manager had given the letter Ex M-364; Ex M-365 is the Investigation Report. The witness categorically stated that the investigation revealed that the CSO manipulated the books of Account pertaining to SB account 10192, 10248, 10305, 10330 and 10464 and also manipulated the balancing books and embezzled an amount of Rs. 2.01 lakhs from the accounts. Surprisingly there was no cross-examination to this witness except suggesting that the document stated to have been missing were available in the Branch. The defence did not choose to cross examine MW-2.

The third witness was the then Manager of the Branch, he identified the Report sent by him to the Vigilance Cell pertaining to CSE / Ex M-365 and identified his letter Ex M-364 about missing of the certain documents. Further stated that, the office staffs were interrogated by the Vigilance Cell in his presence and he is a signatory to the proceedings drawn by the Investigating Officer, he identified the statements recorded by the Investigating Officers from CSE and his wife in his presence (Ex M-353 and Ex M-354).

During his cross examination he has stated that, after coming to know of the misappropriation in the case of five SB accounts, he gave complaint in respect of SB A/c No. 10464 only as per the instruction of the Regional Manager. It was suggested that for all the manipulations / fraud in respect of the SB Accounts Sh. Pundalik Bhat was the supervisory and is responsible.

The fourth witness was the Supervisory Staff Sh. Pundalik Bhat. He identified the statements given by him before the Investigating Officers as Ex M-351 and Ex M-352. He stated that he was supervising the vouchers, cheques, withdrawal slips etc., pertaining to the accounts of the CSO and his family members maintained at the Branch which CSO himself used to enter. He confirmed Ex M-359 is the copy of the balancing book pertaining to the SB accounts of the Staff members – balancing for the month of June 1998 of the Staff members was extracted and tallied by the CSO; he authorised the closing of the SB Account 10192 at the request of the CSO; Ex M-156 and M-153 are the credit challan for Rs. 640/- and copy of the ledger folio of SB A/c 10330 of the CSO, the amount was originally credited to his account for Rs. 640/- and the credit is authorised by him; Ex M-160 is the withdrawal slip dated 08.09.1998 pertaining SB A/ No. 10330 of the CSO and the Ex M-153 is the ledger folio of his A/c No. 10330 – the withdrawal was originally debited for Rs. 100/- authorised by him; Ex M-163 is the cash credit voucher for Rs. 5,000/- pertaining to the SB A/c No. 10330; Ex

M-153 is the copy of the ledger folio of SB account of 10330 of the CSO and the amount was originally credit for Rs. 5,000/- to the account and authorised by him; Ex M-165 is the withdrawal slip dated 01.12.1998 for Rs. 1,000/- pertaining to the SB A/c 10330 – the amount was originally debit for Rs. 1,000/- authorised by him – CSO was maintaining SB accounts in the name of his wife and son but was operated by himself; Ex M-177 is the copy of the Teller's cash book dated 30.06.1998; Ex M-178 is the copy of the receipt scroll of 30.06.1998 – there was credit of Rs. 60/- to the account of his wife SB Account No. 10235 - but there was no SB A/c No. 10235 in the name of his wife Smt. M S Gowaramma - on 30.06.1998, Rs. 60/- was credited to the account and authorised by him; Ex M-251 is the receipt scroll of 12.09.1998 and an amount of Rs. 2,850/- was received on that day for the credit of joint account 10248 standing in the joint name of CSO and M S Ravi Kumar; Ex M-355 is the sub-day book of the said account; Ex M-251 is the voucher for Rs. 2,850/- which was entered in the sub day book; Ex M-356 is the balancing book for SB ledger 20 for the dates 06.01.1999 and 03.02.1999 CSO had extracted and tallied the balancing, actually there was some difference and the manipulating was found subsequently.

During the cross examination when questioned that he himself having initialled the entries of 08.08.1998 and 11.08.1998, how did he come to know that it is altered. The witness replied that the entries are altered subsequent to his checking and initialling which had not come to his notice. He stated that, he identified that the alterations is in the handwriting of the CSO since he is familiar with his handwriting – he was not counter checking the balancing each and every day. There was no suggestion to the witness that there is no change of figures in the balancing; the whole effort of his cross-examination in suggesting that the witness is responsible for all the discrepancies which he denied; to reproduce same samples,

> *"You have colluded with the CSO and did all the things what do you say – you yourself must have done manipulations in the Account – you have simply initialled the entries without proper verification".*

The above suggestions were self-incriminatory.

The further witnesses MW-5 to MW-9 were all the co-employees / officials of the Somwarpet Branch and have supported the Charge Sheet allegations.

16. During the course of Investigation, the investigators had recorded their statements; there is no basis for the 1st Party to contend that the authors of the documents are not examined. In the Investigation Report MW-1 and MW-2 had recorded that the original ledger sheet, sub day sheets and some other vouchers and records pertaining to SB A/c 10192 are not available in the Branch and the Branch Officials had to reconstruct the ledger sheets. Having regard to the complex nature of charges, the Enquiry Officer has assorted the allegations in the charges 1, 2 and 4. Based on the oral and documentary evidence he has reached his conclusion. The 1st Party has not lead defence evidence, at the least could have shown from the cross-examination evidence of the witnesses, whichever is favourable to his case. He could have built up a definite defence during the cross examination of witnesses which he has done. I am convinced that the Report of the Enquiry Officer is neither perverse nor arbitrary.

17. With regard to not proceeding with the Sh. Pundalik Bhat who was the then Supervising Authority of the 1st Party workman, the Disciplinary Authority has assigned it's reason. The 1st Party workman is a responsible Official knowing the limitations of his position and duties. Instead of pointing out towards Sh. Pundalik Bhat, it was for him to explain his role in the misconduct alleged and proved during enquiry. The enquiry having been held fair and proper and the Enquiry Report is on judicious and proper appreciation of evidence, the Disciplinary Authority was well within it's propriety in dismissing him from service, embezzlement of the property of the Bank, tampering and destruction of the records do not call for any punishment less than dismissal from service, that is the settled position of law. His claim is without merit.

AWARD

The reference is rejected.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 24th June, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 14 जुलाई, 2020

का.आ. 597.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ सं. 42/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.07.2020 को प्राप्त हुआ था।

[सं. एल-39025/01/2020-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 14th July, 2020

S. O. 597.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 42/2013) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Canara Bank and their workmen, received by the Central Government on 14.07.2020.

[No. L-39025/01/2020-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 23RD JUNE, 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

ID 42/2013

I Party	**II Party**
Sh. Ramesh A.R. L. Agrahara, Nagenahalli Post, Dist: Chikmagalur – 577168.	The Deputy General Manager, Canara Bank Regional Office, Hampankatta, Mangalore – 575001.

Appearance

Advocate for I Party : Mr. M. Rama Rao

Advocate for II Party : Mr. Ramesh Upadhyaya

AWARD

1. This is a Petition filed by the former employee of the erstwhile Syndicate Bank presently Canara Bank. While working as a Clerk at Hirenallur Branch, Chickmagalur District of the 2nd Party; he was compulsorily retired from service w.e.f. 31.08.2012 as a measure of punishment since the charges framed against him came to be proved in a Domestic Enquiry.

The workman in his claim petition challenges the fairness of procedure of enquiry and contends that the enquiry finding is perverse and the punishment order is illegal. He claims that false allegations were made against him and the punishment is extreme.

2. The 2nd Party contested the claim, denied his allegations in respect of Enquiry Officer, Enquiry procedure, Enquiry Report and the Punishment Order. They have sought to justify the action taken against him.

3. On the basis of the rival pleadings pertaining to the fairness of the Domestic Enquiry an issue is framed, tried and adjudicated as Preliminary Issue. Vide Order dated 12.03.2019 it is held that "*Domestic Enquiry held against the 1st Party workman is fair and proper.*"

4. Argument addressed by both parties. Written brief submitted on behalf of the 1st Party is also on record.

5. The allegations against the workman in the Charge Sheet dated 20.06.2011 runs into pages, to epitomise the same.

On 28.06.2010, he received an amount of Rs. 47,000/- from Smt. Shivamma as initial deposit for opening of a new SB account and issued a receipt for receiving the cash but did not open the account and did not account the cash so received, in the Bank books.

He has not taken the signature of the Superior in the receipt issued to the customer though he has affixed his initials on the receipt. On 29.07.2010 He credited the amount into the account of the customer after her complaining with the Branch Authorities.

He has misappropriated amount of Rs. 47,000/- perpetuated fraud to drive personal benefit, tarnished fair image of the Bank in the eyes of public. He has made pecuniary gain by mis-utilising his official position.

He discounted self-cheques by concealing the fact of maintaining an account with CDCC Bank, Sakarayapatna Branch and issued cheques of the said Bank in favour of his wife, friends and relatives without maintaining sufficient balance in the account and raised funds for his personal benefit, thus, conspired with outsiders for deriving pecuniary benefit at the cost of the Bank.

He colluded with the Branch Manager of CDCC Bank, Sakarayapatna Branch and derived pecuniary benefit through delayed realisation of his cheques presented for payment which he had discounted, thus his action was unbecoming of an employee of the Bank.

He had discounted the cheques drawn by him on the account where his salary was credited; thus, derived pecuniary benefit at the cost of the Bank.

6. The CSE denied the charge of misusing the customers' money. As regards discounting the cheques, he did not dispute the said facts but pleaded that due to family problems, to help his relatives he obliged to family obligations. He expressed his deep regret for any lapse in the matter and undertook not to give scope to such things to happen in future.

7. During the enquiry, the Investigating Officer was the sole witness for the Management. He produced the documents collected during his investigation as Ex Mex-1 to Mex-35, they are the complaint of Smt. S. M. Shivamma dated 27.07.2010, receipt issued by the CSE for having received Rs. 47,000/- from her with cash received seal of 28.06.2010 bearing the signature of CSE – The folio 245 of single lock register dated 28.06.2010 signed by CSE as Cashier which does not reflect the above cash transaction – cash transaction position report of 28.06.2010 that there is no credit entry for Rs. 47,000/- - SB account opening forms of Smt. Shivamma dated 28.06.2010 with address proof and specimen signature, who was introduced by Sh. Govindappa / the pigmy agent – the account master of SB account standing in the name of Smt. Shivamma opened on 24.07.2010 reflecting that the input was given by CSE under his ID authorised by the Assistant Manager under his ID – cash transaction position report of 24.07.2010 establishing that the account of Smt. Shivamma was opened by CSE but no cash credit transaction was made into this account on that day – Account statement showing the credit entry of Rs. 47,000/- through cash deposit on 29.07.2010 – copies of the attendance register of the Branch for relevant period – cash transaction position of 29.07.2010 showing that cash credit was made to the account of Shivamma for Rs. 47,000/- - single lock book folio 271 of 29.07.2010 on which date CSE was the cashier on duty – cash credit voucher for Rs. 47,000/- dated 28.06.2010 in the name of Smt. Shivamma with cash received seals of 28.06.2010, 29.07.2010 and 24.07.2010 with the initials of CSE – report of the Branch Manager dated 28.07.2010 – letter of Shivamma given to the witness in the presence of Bank officials on 05.01.2011 narrating the details of the incident (she has stated that she had delivered Rs. 47,000/- cash to CSE on 28.06.2010 and she was given pass book on 26.07.2010 without the cash entry of Rs. 47,000/- and she complained the matter to the Branch Manager. After three days she was informed by the Branch that the amount is credited to her account. Subsequently, CSE approached her and requested to withdraw the complaint given by her) – the statements of Govindappa / pigmy agent, Sh. Lalesh / the then Assistant Manager and CSE – Account opening form of SB 5537 of Chickmagalur Co-operative Central Bank Ltd., standing in the name of CSE – account statement for the period 31.08.2008 to 31.08.2010 reflecting that the cheques issued by CSE were dishonoured sometimes and the charges were collected on those cheques, with concocted slips made for discounting of cheques to the credit of SB account of the CSE – statements showing that CSE got discounted the cheques and funds were credited to his account – statement of SB A/c No. 09002210001885 standing in the name of Smt. Shantha / wife of CSE at Chickamagalur Branch of 2nd Party, revealing the cheques issued by CSE from his account at Sakarayapatna Bank were discounted by her at Chickmagalur Branch on 05.02.2010 and 17.02.2010 – statements of accounts of two of the customers at Hirenallur Branch revealing that the cheques issued by CSE form his account at Sakarayapatna Branch were discounted immediately by the account holders – documents revealing that three cheques issued by him were

dishonoured by CCDC Bank, Sakarayapatna and the cheques were realised with much delay establishing that he issued cheques without maintaining sufficient balance in his account at Sakarayapatna Branch – The Branch Manager of CCDC Bank and the CSE were staying in the same building at Chickamagalur – the official transaction / GL Enquiry Report pertaining to the account of the CSE.

8. During cross examination of the witness, the defence did not dispute the veracity of any of the documents except suggesting that Mex-2 / the complaint of Smt. S.M. Shivamma since not signed by her husband Sh. K.R. Rajappa is not a valid complaint (the name of her husband Sh. K.R. Rajappa is found in the first complaint given on 27.07.2010 to the Manager of the Bank while Mex-2 is the complaint given on 27.07.2010 addressed to the Deputy General Manager of the 2nd Party Bank). However, following suggestion put to the witness during further course of cross examination - *"…. the account of Smt. Shivamma was opened on 24.07.2010 on her submitting copy of address proof and paying cash of Rs. 47,000/- and the account number was written in the counter foil by Sh. Ramesh on the same day but inadvertently he had not accounted the cash on same say. However, by mistake he had kept the cash in lower drawer of cash counter. He was sick from 26.7.2010 to 28.07.2010. He came to the Branch on 29.07.2010, he opened the lower drawer of cash counter in the presence of some of the staff members and credited the amount of Rs. 47,000/- that was laying in the cash cabin for about four days. This appears as the first credit entry on 29.07.2010…"* That was his defence also.

To corroborate the same, he examined an Attender DW-1 and a pigmy agent DW-2 as his witnesses. His statement was to the effect that CSE had asked him to remove the cash from the lower drawer of the cash cabin by offering key to him; he suggested to take the help of Sh. Lokesh / PTS. Thereafter, he saw Sh. Lokesh removing the cash form lower drawer of the cash cabin. During the cross examination, he admitted that he has not seen Sh. Lokesh removing the cash and giving it to Sh. Ramesh and he has not seen one bundle of notes lying at the lower drawer of the cash cabin. During his re-examination he maintained that he doesn't know whether Sh. Lokesh removed the cash or not.

Sh. Govindappa / DW-2 contradicted the statement given by him to the Investigating Officer wherein it is recorded as *"when Smt. Shivamma had come to the Branch to open SB account, he helped her filling up the forms and she had Election card copy as proof of her identity"*. In his oral statement he deposed that she had election ID card in original and he asked her to get the xerox copy. During the cross examination he admitted his signature on his statements (in English and Kannada) recorded by the Investigating Officer (Mex-14 (a) and (b).

9. The CSE gave his oral submission that, on 28.06.2010, he received the cash of Rs. 47,000/- and issued receipt to her. Since the counter was busy, he did not go through her application Form immediately; after sometime he found that address proof was not attached to the application; since there was no electricity she could not get the xerox copy of the address proof; he returned the cash amount to her but did not receive back the counter foil. On 24.07.2010, Smt. Shivamma came to the Branch with her ID card and paid the amount; it was Saturday and there was heavy rush, he opened the account and wrote the number on counter foil and asked her to come on some other day to collect her pass book, but forgot to credit the amount on the said day. It was practice of the Branch to issue cash counterfoils singly by the cashier and to keep pending the account opening forms and the cash in the drawer and lock it. He kept the cash in the drawer, locked it and went home; he was sick from 26.07.2010 to 28.07.2010; 25.07.2010 was a Sunday. On 28.07.2010, he came to know about the complaint given by Shivamma to the Branch; he came to the Branch on 29.07.2010, got the locker opened by the Branch sweeper in the presence of DW1 and credited the amount immediately to the account of the customer; Smt. Shivamma vide her letter dated 29.07.2010 has withdrawn the complaint. He requested to view his lapses leniently.

As such there is no denial of the allegation that he issued cheques of CDCC Bank Ltd., in favour of his wife and relatives without maintaining sufficient balance in his account. He has discounted self-cheques by concealing the fact of his maintaining account with CDCC Bank. The cheques were realised belatedly.

10. With regard to allegation of misappropriation, he did not dispute the fact that he received Rs. 47,000/- from Smt. Shivamma and given her a receipt with signature and cash received seal of the Branch. But there is no support to his defence that on finding that she did not have copy of election ID card, he returned the amount to her. There was no evidentiary proof that the customer on 24.07.2010 remitted the cash. There is no counter foil bearing cash received seal of 24.07.2010; the pass book is not given on 24.07.2010. His own witness did not support him that the cash was kept locked in the drawer and was removed at his request by the sweeper / Mr. Lokesh in the presence of Sh. H. Puttaswamy / DW1. The Enquiry Officer has considered the defence taken by him from all angles and returned that :

"... charge levelled against CSE / Ramesh A.R, vide Charge Sheet No. CGS(W)/0101/ROM/PCW/2011 dated 20.06.2011 i.e., committing gross misconduct of 'doing acts of prejudicial to the interest of the Bank vide Clause No. 5(j) of Bipartite Settlement stand established".

The Disciplinary Authority on perusal of the Enquiry Report called for the remarks of the CSE on Enquiry Report and vide considered Order dated 31.08.2012 proposed the punishment of removal of service. Thus, he had an opportunity in personal hearing to make his submission about the proposed punishment. However, the Disciplinary Authority did not accept his submissions; vide detailed and considered Order dated 31.08.2012, the proposed punishment is confirmed.

11. It is contended for the 1st Party workman that, the statements of the complainant and the witnesses recorded by the Investigating Officer were marked in the evidence without opportunity to the CSE to cross examine him. Still, the Enquiry Officer relied on these documents and held the 1st Party guilty of allegations that are against the principles of natural justice. The Judgement of the Apex Court in Nirmala J. Jhala vs. State of Gujarat in Civil Appeal No. 2668/2005 DD 18.03.2013 and Roop Singh Negi vs. Punjab National Bank DD 19.12.2008 are relied.

First of the above cited judgements pertains to a Judicial Officer who was tried both by criminal prosecution and Departmental enquiry. During the Preliminary enquiry, Department had placed reliance on the statements of accused / complainant and another witness; those statements were not exhibited during the enquiry and there was no charge in the Charge Sheet that those statements would be relied upon against the delinquent Official. In such circumstances, the Apex Court came down heavily against the Enquiry Officer for relying on those statements. In the said circumstances the Apex Court held that,

".... Cross examination is an integral part of the principles of natural justice and a statement recorded behind the back of a person wherein the delinquent had no opportunity to cross-examine such persons, the same cannot be relied upon."

12. During the course of Investigation apart from the complainant the Investigating Officer had examined the pigmy Agent Sh. Govindappa, the then Assistant Manager (Probation) and the CSE. Out of the above, Sh. Govindappa is examined as defence witness. Since, there was nothing incriminating to the defence case, non-examination of the Assistant Manager (Probation) has not prejudiced the CSE. The circumstances in the above case of Nirmala J. Jhala differ entirely from the present case.

Likewise, in the second cited Judgement also the Enquiry Officer had placed reliance on the FIR registered against the 1st Party workman, which could not have been treated as evidence. The employee had disputed his confession statement, as taken under force. Except the said statement, there was no other evidence in the hands of the Employer Bank demonstrating that he indulged in stealing the Bank draft book.

In the case on hand, there was no such inadmissible evidence or extraneous material relied by the Enquiry Officer. Law is now very much settled that, it is not always mandatory to examine a complainant if the evidence on record is sufficient to make out a case of misconduct against the CSE. The documents marked in evidence barring the complaint and statements of CSE and witnesses were all official documents generated during the course of official functioning of the Bank. Favourable presumption exists under Sec 114-e of the Indian Evidence Act, 1872 that official and Judicial acts are properly performed. On his own showing, he had not credited the amount to the account of the account holder on the very same day he received the amount. If really, he wanted to exhibit his honesty and integrity for his delayed deposit, there was no need for him to seek a part time sweeper to open the locker for him; said part time sweeper is also not examined by him. It may be true that out of sympathy or on being convinced about the full deposit of Rs. 47,000/-, the complainant had withdrawn the complaint.

13. In the copy of the said letter produced by CSE, the complainant has stated that, she approached the CSE with the application and money on 28.06.2010; CSE received the money and gave the receipt with the Bank seal; after some time, returned the money stating that for not annexing the original Ration Card and Identity Card; again, they approached him on 24.07.2007 along with the money and the original document; the CSE entered the account number in the receipt which was already given to her on 28.06.2010 and told her to collect the pass book on some other day; by that time, another employee of the Bank took her inside and enquired the matter and told her that the amount is not credited to her account; he advised her to lodge a complaint; the complaint was prepared by a customer and she subscribed her signature; she came to know that the amount is credited to her account on 29.07.2010; if anything is written contrary in her complaint of 27.07.2010, she shall not be held responsible; she is withdrawing the complaint of 27.07.2010.

Even if the contents of the above letter is from the customer, then also, things stand to clear that the amount of Rs. 47,000/- paid by the customer was not credited to her account until 27.07.2010 on which date she

lodged her complaint with the Bank. There was no cash transaction / credit entry of Rs. 47,000/- on 28.06.2010. The account is opened on 24.07.2010 in the Account master of SB A/c No. 09082200042332 (Mex-7) that really poses a question, *"what was the need open the account on 24.07.2010 without the initial deposit?"* The input of the said account is given by CSE under his ID. As per the account statement of her pass book, the amount is credited on 29.07.2010. The statement of the complainant is that she went to the Branch on 29.07.2010 on coming to know that the amount is credited to her account. So, in between 24.07.2010 to 29.07.2010 there is a long gap and the CSE failed to establish that he was not in custody of the amount of the customer during the interim period. It is a Departmental Enquiry and the technicalities of the criminal jurisprudence is not invited to prove a misconduct.

14. The Enquiry Report is based on the undisputed facts with regard to discounting of cheques through his family and friends. As regards misappropriation is concerned, it was established that the CSE did not account Rs. 47,000/- received from the customer on the very day of its receipt, he has delayed to credit the amount to her account for which there is no satisfactory answer. The Enquiry Report is a well-considered Report, neither arbitrary nor perverse.

15. Both the Disciplinary Authority and the Appellate Authority have passed speaking Orders on consideration of the defence. Still, the question remains whether the misconduct proved would attract extreme punishment of compulsory retirement?

It was the allegation in the Charge Sheet itself that, he has mis-utilised the customer's money, misused his official position and tarnished the fair image of the Bank. He has issued cheques of CDCC Bank Ltd., in favour of his wife, friends and relatives without maintaining sufficient balance in his account and raised funds for his personal benefit - he conspired with the outsiders for deriving pecuniary benefits at the cost of the Bank - he has apparently colluded with the Branch Manager of CDCC Bank, Sakarayapatna for delayed realisation of cheques presented for payment - he has discounted the cheques on the account where his salary was not credited - he has tarnished the fair image of the Bank in the eye of the Bank. His acts were against the circulars issued by the Accounts Department and the Personnel Department; those circulars were produced before the Enquiry Officer.

16. The banking system thrives on the public money and public confidence, even a small breach in the confidence deposed by the customers has a long lasting effect on its survival. His intentional indulgence in the misconduct proved is glaring; it is not an instance of bonafide negligence in the spur of a moment. The punishment of compulsory retirement with superannuation benefit commensurates with the gravity of allegations proved against him and does not call for interference in exercise of jurisdiction of Sec 11-A of 'the Act'.

AWARD

The Petition filed by the 1st Party workman Sh. Ramesh. A.R under Sec 2-A of the I.D Act is dismissed.

(Dictated to o/s LDC, transcribed by her, corrected and signed by me on 23rd June, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 14 जुलाई, 2020

का.आ. 598.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक आफ बडौदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ सं. 36/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.07.2020 को प्राप्त हुआ था।

[सं. एल-12011/78/2015-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 14th July, 2020

S. O. 598.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 36/2015) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda,. and their workmen, received by the Central Government on 14.07.2020.

[No. L-12011/78/2015-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 08TH JULY, 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 36/2015

I Party	**II Party**
The General Secretary, Bank of Baroda Employees Union, C/o Bank of Baroda, II Phase, J.P. Nagar, Bangalore – 560078.	The Dy. General Manager, Bank of Baroda, Operations & Services Department, Head Office, Bank of Baroda, 8th Floor, Suraj Plaza-I, Sayajiganj, Baroda – 390005.

Appearance

Advocate for I Party : Mr. Muralidhara

Advocate for II Party : Mr. T.P. Muthanna

AWARD

The Central Government vide Order No. L-12011/78/2015-IR(B-II) dated 03.11.2015 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the action of the management of Bank of Baroda, in withdrawing the privilege of payment of additional rate of interest on term deposits paid to staff / retired staff in case of Joint Accounts with Dependents (not being the Principal Account holder), is legal and justified. If not, what relief are the workmen entitled for?"**

1. The 1st Party Union has raised the issue pertaining to the benefit so far enjoyed and discontinued i.e., additional rate of interest on term Deposits paid to staff / retired staff in case of Joint Accounts with dependents (not being the principal account holder).

Their case is, the 2nd Party vide circular No. BCC:BR:96/164 dated 20.04.2004, authorised all Branches of the Bank to pay additional interest to retired staff members who are senior citizens resident in India on their fresh term Deposits and renewals of existing term deposits for maturities from 15 days to 10 years at 1.50% per annum – 1% as normal staff privilege plus 0.50% as a benefit to senior citizens. Vide circular No. BCC:BR:98/259 dated 18.09.2006, the additional interest to retired staff members who are senior citizens was reduced from 1.50% per annum to 1% per annum. Vide circular No. BCC:BR:100/4 dated 01.01.2008, the Branches were authorised to allow additional interest of 0.50% available to senior citizens to eligible retired / ex-staff members in addition to the existing benefit of 1% in rate of interest (over and above public rate) available on term Deposits under staff scheme, thus, additional rate of interest was restored. Vide Circular No. HO:BR:106:36 dated 12.02.2014, comprehensive guidelines was issued in respect of staff rate and senior citizens rate of interest on term deposits. Under the circular the beneficiaries were defined like –

(a) Lady member of the staff having joint account with her husband, who is not an employee of the Bank except in the case of legally separated husband.

(b) Lady member of the staff holding account jointly with her children during the life time of the husband.

(c) A spinster / bachelor holding joint account with her/ his dependent parent and/or siblings.

(d) Widow of the deceased ex-member of the staff.

(e) Ex-member of the staff whose spouse is expired, jointly with son / daughter.

(f) Accounts of Employees' Union Associations and SC/ST Associations.

(g) Bank of Baroda Provident Fund, Bank of Baroda Staff Co-Operative Credit Societies and Sports & Cultural Clubs, membership of which is restricted to the staff.

Number of retired employees have availed the benefit and the benefit has fructified into condition of service. When the matter stood thus, vide circular dated 28.07.2014 in number HO:BR:106:143 under the guise of clarification, the benefit is reduced stating that additional interest to Bank staff members or retired staff members is available only in the case of staff member or retired staff members / senior citizen staff where, staff/ senior citizen staff is the principal account holder. Thus, the customary privilege is withdrawn by the 2nd Party arbitrarily. The benefit so far enjoyed was the outcome of various representations made by the staff members and Association of retired staff members seeking as privilege for having served the 2nd Party Bank and the said privilege could not have been withdrawn. Since, the privilege existed for the long time and fructified to condition of service, the 2nd Party was required to comply with the mandatory requirement under Sec 9-A of 'the Act', which is over looked by the 2nd Party. The privilege withdrawn in respect of joint term deposits (made in favour of family members particularly when declaration is furnished to the effect that the money deposited belongs to a concerned staff member) is not justified.

2. The 2nd Party contests the claim and counters the same on following lines,

The 2nd Party has not withdrawn additional 1% interest rate as alleged by the 1st Party. The circular dated 28.07.2014 is clarificatory in nature and issued on the basis RBI and IBA's circular / guidelines. Payment of additional rate of interest at 1% in account of the staff members existing or retired is a discretion vested with the 2nd Party as per RBI guidelines. The Reserve Bank of India vide it's master circular RBI/2014-15/63DBOD.No.DIR.BC. 15/13.03.00/2014-15 dated 01.07.2014 allowed 1% additional rate of interest to the discretion of the Banks on the deposits of staff member or retired staff member either singly or jointly with any member or member of his / her family. The additional rate of interest payable to the Bank staff members or retired staff members is a gracious payment without there being any bilateral agreements. It does not account to any customary privilege or concession. The RBI issued a clarification letter in number DBOD/DIR. No. 19428/13.01.01/2013-14 dated 02.06.2014 having noticed certain anomalies and irregularities in respect of payment of additional 1% rate of interest. It was directed that benefit of additional rate of interest to Bank staff members are available only in the case of staff members or retired staff member who have account singly or jointly with family members. If the staff member / retired staff member is the principal account holder, the Bank shall obtain declaration from the depositor that the money deposited or which may be deposited from time to time in such accounts shall be the money belonging to the staff member / retired staff member.

3. Both Parties have produced the documents and those documents are marked with consent of opposite Party as Ex M-1 to Ex M-8 and Ex W-1 to Ex W-3.

4. Argument oral / written is submitted by both.

5. Having regard to the nature of dispute, the parties were not called upon to adduce oral evidence since the referred issue can be sorted out on the basis of admitted documents.

While the 2nd Party produced the copies of master circular dated 01.07.2013 and the subsequent circulars issued by the Bank marked as Ex M-1 to Ex M-8, the 1st Party has produced the copy of petition given

by the Union to the RLC (C) and the circular No.4 of 2008-09 dated 07.06.2008 in respect of additional rate of interest on the deposit held jointly in the name of staff member and a recent circular dated 22.05.2019 regarding payment of 1% additional rate of interest on staff deposits applicable to SBI.

6. Admittedly, payment of additional rate of interest was never an issue between the Trade Union and the 2nd Party Employer. On the showing of the 1st Party itself, it was the benefit made available to the staff members which was to continue even after their retirement and also to flow after their death to their spouse / sibling / offspring. Now coming to the question whether the additional rate of interest so far enjoyed by the staff members / retired staff members and their kith and kin fall under the category of condition of service? If it happens to be a condition of service, then only the pre-requisite contemplated for change of service condition by Sec 9-A of 'the Act' can be brought to the fore front.

7. Generally speaking, the additional rate of interest at 1% enjoyed so far may sound like a service condition, virtually it is not so. There was no privity of contract between the employer and the employee either at the time of the employee joining the service or subsequently during his tenure with the 2nd Party. Items 1 to 11 of Schedule 4, to 'the Act' envisage "conditions of service for change of which notice is to be given under Sec 9-A of the Act". The additional rate of interest does not fall under the category of wage or allowance or a statutory benefit of item No. 1 to 11 of the 4th Schedule of 'the Act'. Hence, while changing the policy in respect of additional rate of interest, the 2nd Party was not legally required to issue a notice under Sec 9-A of 'the Act'.

The additional rate of interest which was bestowed for the welfare of the employees and which was to continue even after their retirement, since not an outcome of a settlement as defined by Sec 2(p) of 'the Act'. Thus, no right has ensured to the members of the Union to demand restoration of the earlier policy as it existed prior to the issue of the revised circular Ex M-3 dated 28.07.2014.

8. In Fact, the circular Ex M-3 does not snatch away any benefit from the staff / senior citizen staff. It is a clarification in response to the anomalies faced by the Branches. Going by Ex M-3, it reveals that a question arose in respect of the joint accounts wherein first holder is the senior citizen, dependent of the staff and the second holder is the senior citizen retired staff. The position as per the existing guidelines was, additional interest of 1.50% can be paid to retired staff who is a senior citizen. The matter was referred to IBA for clarification and the IBA vide their letter dated 18.06.2014 advised that

> *'as clarified by RBI vide No. DBOD.DIR.No.19428/13.01.01/2013-14 "that benefits of additional interest to Banks' staff members or retired staff member is available only in the case of staff member or retired staff members has an account singly or jointly with family member where the staff member / retired staff member is the principal account holder"'.*

The above clarification except streamlining the mode of deposits (pertaining to joint deposit held by the staff members / senior citizen staff members) has not withdrawn the additional 0.50% of rate of interest enjoyed by them. The 2nd Party has also clarified that the 1% additional rate of interest enjoyed by the staff members is still continuing and same is not withdrawn. In this regard clarification is given by the 2nd Party, vide circular Ex M-4 to the effect that, in the event the staff member / retired staff member holding a joint account as principal account holder, the Bank shall obtain a declaration that the money deposited / to be deposited time to time shall be the money belonging to the said depositor only.

I fail to understand how this undertaking would intervene with the staff / retired staff getting the additional interest at the rate of 1% on their deposits. Instead, the circular prevents outside money being invested so as to earn additional rate of 1% income which is exclusively available to the employees / retired employees of the 2nd Party. Moreover, this additional interest being a discretionary benefit is always at the disposal of the Bank.

9. Sh. MD for the 1st Party has placed his reliance on the Judgement of the Hon'ble High Court of Bombay in the matter of Union Bank of India Employees' Union and Union of India and others (2003-I-LLJ) to persuade that the benefit which are taken away by the circular M-3 and M-4, in fact amounts to change of existing custom, privilege / usage arising out of bilateral understanding between the parties. In the said case, the Hon'ble High Court of Bombay was dealing with the situation where the dispute was raised in respect of discontinuation of housing loan to the employees of the Bank at 4% interest. This Judgment does not come in

handy for the 1st Party, since rate of interest given exclusively to the Bank employees / retired employees still continues without any change / detrimental to the interest of the employees / retired employees.

10. Though it is contended for the 1st Party that, the benefits granted vide Ex M-2 the circular dated 12.02.2014 was narrowed down vide circular Ex M-3, a conjoint reading of both circulars would not subscribe to such apprehension. The additional rate of interest at 1% to the staff members and additional rate of 0.50% to the retired staff members continue as before subject to conditions stipulated by "book of instructions 2012 Volume on 'Deposits General' would continue as stated in the circular Ex M-3". The dispute raised is imaginary.

AWARD

The reference is rejected.

(Dictated to o/s LDC, transcribed by her, corrected and signed by me on 08th July, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 14 जुलाई, 2020

का.आ. 599.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवने"वर के पंचाट (संदर्भ सं. 06/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.07.2020 को प्राप्त हुआ था।

[सं. एल-39025/01/2020-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 14th July, 2020

S. O. 599.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 06/2016) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bhubaneshwar as shown in the Annexure, in the industrial dispute between the management of UCO Bank and their workmen, received by the Central Government on 14.07.2020.

[No. L-39025/01/2020-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, BHUBANESWAR
Industrial Dispute Case No. 06 of 2016
Dated of passing of the award 25.06.2019

Present: Shri B.C.Rath,LL.B., Presiding Officer,
Central Government Industrial Tribunal, Bhubaneswar.

Between:

The Zonal Manager,
U.Co. Bank, Ashok Nagar.
Bhubaneswar. ...First Party- Management

-Versus-

Sri Bijaya Kumar Nayak
S/o. Late Kasinath Nayak,
At- Jasuapur,P.O. Bramhansuanlo,
P.S. Balianta, Khurda-752100. ...2nd. Party Workman/Union

Appearances:-

For the First Party Management : Sri B. C. Das
For the 2nd Party workman : Sri A.K. Sahoo

AWARD

This award is directed against an application under Sub Section 2 and 3 of Section. 2(A) of the Industrial Disputes (Amendment) Act, 2010 with a prayer for declaring the termination of the applicant with effect from 7.5.2015 as illegal and unjustified and for a direction of his reinstatement with back wages and other service benefits.

2. Briefly stated the case of the applicant workman is that he was initially appointed as a Sweeper-cum-Mali by the Zonal Manager, U. Co. Bank on 3.8.2006 temporarily on daily wage basis at the rate of Rs.50/- per day. He performed his duty as a Sweeper-cum- Mali very sincerely and satisfactorily to the utmost satisfaction of his employer as a result of which he was asked to work in different branches of the Bank under the control of the Zonal office, Branches of the Bank at Master Canteen, CRPF, Chandrasekharpur, Gothapatna, Rasulgarh and Training Centre of the Bank. He was also entrusted with other works in the Zonal office as well as branch offices of the Bank. On 6.5.2015 while he was posted and working in the training centre, Ashoknagar of the Bank, the Officer-in-charge of the Training Centre verbally told him, that his service was no more required with effect from 7.5.2015. It is his claim that at the time of such denial of engagement he was paid Rs.200/- per day towards his daily wages. That apart, it is his claim that he had been working in the Bank, continuously and uninterruptedly for the period from 3.8.2006 to 6..5.2015 for which he was extended benefit of bonus for his service to the Bank. According to him he was engaged for more than 240 days on each calendar year after his joining. Even he worked 240 days uninterruptedly in a calendar year preceding to his termination. He was not paid notice pay and rehabilitation compensation while being disengaged /discharged/retrenched by the Management Bank. As such termination of his service was illegal being violative of the provisions of Sec.25(f) of the I.D. Act. Hence, the Management Bank is legally bound to reinstate him with back wages.

3. The claim of the workman is resisted and contested by the Management Bank on a strand that all Recruitment by the Management Bank is made directly according to the norms and basis of the staff strength and Recruitment Rules of the Management Bank. No officer of the Bank has any authority to appoint any person in contravention of the Recruitment Policy and Rules. Therefore, the claim of the applicant regarding his appointment in absence of any appointment letter or advertisement for such recruitment shall be discarded. It has also been contended that since of the disputant was availed occasionally for an agreed amount for doing a particular job/work. At no point of time he was either appointed or engaged for more than 240 days in a calendar year or in any calendar year. His service if any, to the Management Bank being contract in nature. There was no employer and employee relationship between the parties. Hence, question does not arise the retrenchment or termination of service of the disputant applicant. Thus, a contention has been advanced by the Management to dismiss the claim statement.

4. On the aforesaid pleadings of the parties the following issues are to be adjudicated for just decision of the case:-

ISSUES

(1) Whether the application of the applicant filed under sub section 2 & 3 of Section.2-(A) is maintainable under the Industrial Disputes Act?

(2) Whether the allegation of the 2nd Party workman that his alleged termination with effect from 7.5.2015 by the Management of UCO Bank is legal and justified?

(3) If not, what relief the workman of the 2nd Party Union are entitled to ?

5. The applicant has examined himself as W.W.I and filed Xerox copy of his complaint dated.13.7.2015 before RLC (C),Bhubaneswar, Xerox copy of reply of the Management before the RLC(C), Bhubaneswar, Xerox copy of certificate of Conciliation Officer, Xerox copies of Debit vouchers of the Management paid to the workman for his engagement, Xerox copies of Attendance Sheet-cum- expenses statement of the Bank, Copies of Bonus Worksheets, and copy of the letter dated.23.11.2013 issued by the Management which are marked as Ext.1 to Ext.7 respectively in support of his claim whereas the Management Bank has examined its Senior Manager ,HRM Dept. of its Zonal Office, Bhubaneswar to refute the claim.

FINDINGS

6. The first point of objection raised by the Management Bank is that the present dispute raised by the applicant cannot be termed as an industrial dispute on account of the same not being raised by the "workman" of the Management Bank. The applicant being a rank outsider has no locustandi to raise any claim/dispute before this Tribunal. On a close scrutiny of the pleadings and evidence of the parties it is seen that there is no serious dispute to the fact that the service of the applicant was availed by the Management Bank for an agreed amount. It is in the oral testimony of the applicant that he was paid wages fixed on daily basis. It was

initially fixed Rs.50/- per day and it was Rs.200/- per day when he was asked to stop rendering service to the Bank. The above specific oral testimony of the applicant is not disclaimed or denied by the Management Bank or in the evidence of M.W.1. On the other hand the applicant has claimed that he was paid bonus in every year for his engagement. In this regard Ext.6 the bonus worksheets are filed by the applicant. The Management Bank has not disowned the above documents. M.W.1 has expressed his inability to say if any bonus was paid to the applicant.

Section.2(s) provides:-

> **"workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person".**

Hence an employee irrespective of temporary or permanent or on daily wage basis is a workman as defined in the Act. Keeping in view the above definition of the workman, the applicant being engaged and paid wages on daily basis can be safely held as a workman of the Management Bank. The dispute relates to refusal of employment to him. That being the facts and circumstance emerging from the pleading and evidence of the parties I am constrained to dismiss the contention of the Management Bank that the applicant is not a workman. Further, it is seen that the applicant was allegedly refused employment with effect from 7.5.2015 and the case is filed before this Tribunal on 20.1.2016 along with a certificate issued by the A.L.C. (Central), Bhubaneswar about failure of conciliation between the parties. Be that as it may the application preferred in Sub Sec. 2 and 3 of Sec. 2(A) is found to be maintainable.

7. The other issue raised by the Management is that the applicant was never given any appointment and his engagement was not continuous or interrupted for 240 days in any calendar year. He being engaged to do certain specific work for a an agreed amount on a contract basis there is no scope to claim any relief U/s.25(f) of the Act as the alleged engagement was for specific purpose. There was no requirement for giving notice pay and rehabilitation compensation to the applicant. On a close scrutiny of the oral testimony of the witnesses and the parties as well as the documents filed by the applicant it is crystal clear that though no appointment letter was issued to the applicant he was paid fixed amount for a day and even he was paid bonus on each year for certain period before the alleged refusal of employment. Undoubtedly as a settled principle the initial burden lies on the workman to show that he was employed for more than 240 days continuously and uninterruptedly in a calendar year in order to claim any relief U/s.25(f) of the Act. When it is pleaded in evidence that the applicant was paid wages and he availed the benefit of bonus, the presumption lies in his favour as far as his claim for continuous and uninterrupted engagement of 240 days in a calendar year is concerned. Hence the burden shift to Management to prove his stand that the applicant was engaged for a specific purpose and for a specific period. The contract in this regard having been completed no notice is required to be given to the workman. But the Management has not filed any document or preferred to show that engagement of the applicant was for a specific purpose or for a specific period. In absence any credible evidence from the side of the Management the unchallenged evidence of the applicant that he was paid wages as well as bonus is to be accepted. Unless he worked for more than 240 days in an year he was not expected to be given bonus. Law is well settled that even if a workman is engaged temporarily and on daily wage basis and if he continued to work for more than 240 days continuously in a calendar year is to be given notice or notice pay and rehabilitation compensation before his retrenchment or termination, in the case at hand the applicant disputant is found to have been working in the Management Bank in between 3.8.2006 to 7.5.2015. It is not disputed that he was not paid any notice pay and rehabilitation compensation. He was in continuous engagement of the Bank for more than 240 days in a calendar year to his disengagement. That being the facts and circumstance of the case, refusal of employment to the applicant is apparently in violation of the provisions of Sec. 25(f) of the Act.

8. The next question arises for consideration to what relief the applicant workman is entitled. In this regard it cannot be over sighted that relief of reinstatement is not automatic in case of violation of the provisions of Sec.2S(f). The relief of reinstatement is ordinarily available to an employee. But such relief of reinstatement with or without full back wages need not be granted automatically in every case where the labour Court/Industrial Tribunal records the finding that the termination of service of a workman was in violation of the provisions of the Act. For this purpose, several factors, like the manner and method of selection, nature of appointment adhoc, daily wage basis. His job was part time as he was engaged only for the purpose of sweeping and gardening. There is no evidence on record to suggest that any sanction post for the above work is lying vacant in the Management Bank. Taking into consideration the above

facts and circumstance the relief of reinstatement with or without full back wages should not be appropriate in the case at hand. However, having regard to the facts violation of the provisions of Sec.25(f) and the period for which the applicant had rendered service to the Management Bank it would be just and appropriate to award compensation of Rs.75,000/- to be paid by the Management to the workman in lieu of reinstatement. The compensation shall be paid within two months from the date of enforcement of the award failing which the applicant is entitled to interest @ 6.5% per annum on the said amount from the date of publication of the award till compensation is paid.

The award be notified as per law.

Dictated & corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 14 जुलाई, 2020

का.आ. 600.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ सं. 81/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.07.2020 को प्राप्त हुआ था।

[सं. एल-12011/57/2018-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 14th July, 2020

S. O. 600.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 81/2018) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bhubaneshwar as shown in the Annexure, in the industrial dispute between the management of UCO Bank and their workmen, received by the Central Government on 14.07.2020.

[No. L-12011/57/2018-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

I.D. Case No.81 of 2018

1. The Zonal Manager,
U Co Bank,Zonal Office,
C-2,Ashok Nagar,
Bhubaneswar,Odisha. ...1st. Party Management

-Versus-

2. The General Secretary,
U Co Bank Employees Association,
C/o. U Co Bank, College Square Branch,
Cuttack-3. ...2nd Party Workman

7) 30.12.2019 The Government of India, Ministry of Labour and Employment have referred an Industrial Dispute between the above named parties for its adjudication vide its order No. L-12011/57/2018-I.R(B-II) dated.28.11.2018 under Clause (d) of sub-section (1) and sub-section (2-A) of Section 10 of the Industrial Disputes Act,1947(14 of 1947) and the Schedule of the reference is as follows:-

"Whether the action of the Management of U Co Bank in transferring 09 employees Shri Narendra Kumar Nayak, the Joint Secretary of UCBEA being protected employees and 08 others (as annexed) on 19/03/2018 without following the principles of transfer policy is legal and justified ? If not, what relief these employees are entitled to ? Whether the allegation of the U Co Bank Employees Association violating the provisions of Section 33

of the I.D. Act by the Management of UCO Bank by way of relieving the transferees (as annexed) on 22.03.2018 during the pendency of conciliation is legally tenable and justified? If so, what relief these employees/award staffs are entitled to ?"

On receipt of the reference the parties were noticed for their appearance and filing of their statements. Neither the union appeared and submitted its statement of claim after being noticed twice nor the Management filed their written statement. Since the Union failed to submit his statement of claim after issuance of notice it may be presumed that either the dispute is already resolved or the Union is not interested to prosecute the dispute. In the above back drops the Tribunal can not prolong the case for an indefinite period and it is not in a position to adjudicate the dispute without statement of claim and written statement of the parties as well as in absence of the evidence if advanced by the parties.

It is pertinent to mention here that until adjudication of the dispute referred to by the authority concerned, an award cannot be made within the meaning of the award as defined under section 2(b) of the Act. There is also no provision in the Act to pass a no-dispute award or a nil award in case the disputant fails to make appearance and prosecute its claim. In that view of the matter passing of a no-dispute award or nil award for absence of the disputant/parties would be a misconception and the above position has been settled by the Hon'ble High Court of Odisha in the case between M/s. IDL Chemicals Limited –Versus- P.O. Labour Court,Sambalpur reported in 72(1991)CLT 73 and in the decision of t he Calcutta High Court in the case of B.R. Bermen and Mohatta(India) Pvt. Ltd., -versus-Seventh Industrial Tribunal,West Bengal and others(short noted in 1977 Lab. I.C(NOC)13(CAL). It has been also held by the Hon'ble Courts that so long as the dispute remains unsettled and the proceeding came to an end without adjudication of the dispute between the parties, there is no bar under the Act whereby the Government is precluded from referring the dispute over again so that there may be an industrial adjudication as contemplated by the Act.

Having regard to the above facts and circumstances as well as settled principles I am constrained to dismiss the case registered on the reference of the dispute without any award and accordingly the reference is disposed of. A copy of this order be sent t o the Government of India, Ministry of Labor for necessary action at their end.

Dictated & corrected by me.

Sd/-

Presiding Officer

नई दिल्ली, 14 जुलाई, 2020

का.आ. 601.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, नई दिल्ली के पंचाट (संदर्भ सं. 25/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.07.2020 को प्राप्त हुआ था।

[सं. एल-12012/128/1993-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 14th July, 2020

S. O. 601.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 25/2010) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 2, New Delhi as shown in the Annexure, in the industrial dispute between the management of Indian Bank and their workmen, received by the Central Government on 14.07.2020.

[No. L-12012/128/1993-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 25/2010

Date of Passing Award- 27th January, 2020

Between:

Shri Raj Kumar Sharma,
S/o Shri O.P. Sharma,
R/o 19/56, Hassanpura, Lohamandi,
Agra, U.P ... Claimant

Versus

The Branch Manager,
Indian Bank, Sky Tower,
Sanjay Place, Agra. ...Management

Appearances:-

None for the claimant (A/R) : For the claimant.

Shri Ayushya (A/R) : For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of M/s Indian Bank, Agra, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-12012/128/93 (IR(B-II) dated 29.06.2010 to this tribunal for adjudication to the following effect.

> "Whether the action of the management of Indian Bank Sky Tower, Sanjay Place, Agra Branch, in not reinstating to Shri Raj Kumar Sharma, Son of Shri Om Prakash Sharma, Ex. Sub. Staff against permanent vacancy is legal and justified? What relief the workman is entitled to?''

As per the claim statement filed by the claimant he was appointed as a sub staff of the Bank management on 11.10.85 on temporary basis. Subsequently on 24.04.1988 the management referred his name alongwith one Yogender Singh for empanelment in the list of temporary sub staff since he had full filled all the requirements. But thereafter the workman was never regularized in the post and all the correspondence made by him in this regard we are not considered. On the contrary the workman was allowed to work for 3 days in a week i.e. 12 days in a month instead of the regular work done by him earlier. On 11.02.1990 he was not allowed to work in the bank as daily wager and some other person was employed. Being aggrieved he raised a dispute before the Labour Commissioner praying reinstatement in the service. When the conciliation proceeding before the Assistant Labour Commissioner was going on the Regional Manager of the Bank instructed the claimant to report the bank for duty on 27.11.1992. Though the workman reported the bank refuse to accept the duty. The conciliation proceeding failed but the Labour Commissioner did not refer the matter to this tribunal for adjudication. Challenging the said order the workman filed a writ before the Hon'ble High Court of Allahabad and Hon'ble Court by order dated 12.04.2010 directed the commissioner to send the reference for adjudication. Hence, the reference was made. The claimant has further stated that the nature of work discharge by him was permanent and there are also vacancies in the Bank for the said post. But the Bank management subjected the workman to unfair labour practice by not regularizing his service against the said vacant post. With such assertion the claimant has pleaded for a direction to the management to reinstate him against permanent vacancy with full back wages and other benefits since 11.02.1990 when his service was refused by Bank.

Being noticed the management Indian Bank appeared and filed WS denying the stand of the workman. It has been pleaded that the claimant was initially engaged in the month of October 1985 as a daily wager on temporary basis and his engagement was on need basis only against leave vacancy. He was working hardly 15 days in a month and never a permanent regular employee of the Bank. Furnishing the number of days the workman had worked since the year 1985 till 1991 year wise the management has stated that during no calendar

year he had worked for more than 240 days to claim continuous service in terms of section 25B of the ID Act 1947. The other stand taken by the management is that the workman voluntarily stopped working for the bank in the year 1990 and several letters were written to him to report for duty against the leave vacancy. One such letter was also communicated to him from the Regional office of the bank. The claimant instead of joining duty made a correspondence asking for an assurance that he will join duty if assured to be made permanent. Considering his attitude the Regional office deleted his name from the panel of temporary sub staff and since then he was not engaged by the Bank. The alleged unfair Labour practice unfounded and he is not entitled to the relief sought for.

The claimant filed rejoinder to the WS.

On this rival pleading following points which are required to be determined are.

(1) Whether the workman was illegally denied absorption against permanent vacancy by the bank.

(2) Whether the workman was subjected to unfair labour practice and to what relief he is entitled to.

The claimant workman examined himself as WW1 and filed only photocopies of the letter dated 22.04.88 written by the Branch Manager to the Regional Manager requesting empanelment of the claimant in the list of temporary sub staff and one letter written by the Regional Manager asking the claimant to join the service of the bank as a temporary sub staff and the reply given by the claimant to the said letter asking for an assurance to be observed against permanent vacancy. These letters not being original have been marked as A-1, A-2, and A-3 for identification. The claimant was cross examined at length by the management. On the other hand the management examined its Branch Manager as MW1 who has filed several documents marked in a series of MW1/1 to MW1/10. These documents include several correspondences made by the bank to the claimant asking him to report for duty. Those letters are MW1/1 to MW1/05. In addition to the same the management has also filed the letter of the Regional Manager directing the Branch Manager not to engage the claimant as a temporary sub staff since his name has been deleted from the list of empanelled sub staff. In addition to the same the letters written by the workman to the bank management asking for an assurance to the made permanent have also been filed.

At the outset of the argument the Ld. A/R for the workman submitted that the Bank has admitted about the engagement of the workman as a temporary sub staff and has also submitted a statement indicating the days of work done by him. The Bank has also admitted that he was empanelled for engagement as sub staff and there is vacancy in the bank for the said post. In such a situation the denial of the Bank for regularizing his service is nothing but unfair labour practice meted to the workman and he is entitled to the relief sought for.

The counter argument of the management is that the management is a nationalized bank having its own rules and procedure of the recruitment the workman was engaged temporary solely on need basis. Such intermittent engagement cannot confer any right on the workman to be regularized against the vacant post. He gave emphasis on the statistics of the work done by the workman to argue that the claimant having not worked for 240 days in a calendar year cannot claim continuous service or temporary status of the employment.

FINDINGS

Point No.1

In his sworn testimony the workman has stated that he was initially engaged by the bank on 11.10.85 as a member of sub staff. The appointment was on temporary basis. Subsequently the bank wrote a letter to the management Regional Office for empanelling him in the panel of sub staff. The said letter dated 22.04.88 has been placed on record as A-1. The management has not disputed the letter. From this letter it clearly appears that the workman had worked for the Bank for a total period of 620 days between 1985 to 1990. The days vary from 38 to 157 but at no point of time it was 240 days or more in a calendar year. The witness for the management has stated that the bank had permanent vacancy in the post of sub staff and as such the Branch Manager had requested the Regional office for empanelment of 2 persons as temporary sub staff which was complied by the Regional Office. Accordingly the claimant had worked in the bank up to the year 1990. Suddenly he stopped working and made correspondence claiming permanent absorption. In response to the same the bank ask the workman to work for the bank on the same terms and conditions as he was working earlier. The workman instead of joining for duty asked for an assurance to the effect that he will perform the duty if would be absorb against the permanent vacancy. His demand was not acceded to and the Regional Manager wrote a letter to the Branch Manager informing deletion of his name from the Panel mandating not to engage him any further.

The workman while adducing evidence has not produced any document showing his engagement for more than 240 days in a calendar year so as to claim continuous service in the bank. The workman has admitted the stand of the management that he was working for 3 days in a week and sometime for more days but not

exceeding 240 or more days. Thus, under no circumstances the claimant cannot be held to be in continuous service of the management.

The reliance has been placed by the management in the case of **Secretary State of Karnatak and others vs. Uma Devi** and others decided by the Constitution bench of the Hon'ble Supreme Court and reported in (2006)4SCC and in the case of **Indian Drugs and Pharmaceuticals limited vs. Workmen Indian Drugs and Pharmaceuticals Limited decided by the Hon'ble Supreme Court and reported in (2007) 1 SCC 408** to argue that when there are rules of recruitment those cannot be relaxed and the court or tribunal cannot direct regularization of temporary employees as the said regularization cannot be accepted as mode of appointment. While relying in the case of Uma Devi argument was also advanced to say that the claimants claim appointment on permanent basis can only be considered on the basis of merit and rules of public employment. He also pointed out to the evidence of the claimant to say that he had worked as a temporary worker on intermittent basis between 1985 to 1990 and letter on refuse to make himself available for work unless assured to be absorbed permanently. This itself proves that the workman was not working continuously for the management.

It is a principal of law decided by the Hon'ble Supreme Court in the case of Uma Devi and Indian Drugs and Pharmaceuticals referred supra that no appointment should be made or regularized which would stand opposed to the right or principal of public employment. Regularization of temporary worker cannot be allowed as a mode of appointment or recruitment. If a given situation a person need to be regularized for that purpose a post must be created or sanctioned. Hence considering the evidence and the legal position it is concluded that the claimant since had not completed 240 days continuous work for the management and since was engaged intermittently his claim for regularization is not tenable and the bank management cannot be found with fault for refusing his regularization. The point is accordingly answered against the workman.

Point No.2

Section 2(ra) read with V Schedule of the ID Act provides that when a workman is employed as Badlis, Casuals or temporaries for years with the object of depriving him of the status of permanent workman the same amounts to unfair labour practice. Here is a case where the evidence proves that the workman had never worked for 240 days in a calendar year nor his service was continuous. Moreover, he had voluntarily stopped working for the Bank and had put forward certain conditions including assurance of permanent status which was not accepted by the Bank. In view of the evidence and situation it is concluded that the workman was not subjected to unfair labour practice and as such not entitle to the relief sought for. This point is accordingly against the claimant/workman. Hence, ordered.

ORDER

The reference be and the same is answered against the workman and the workman is held not entitled to any relief. Send a copy of this award to the Appropriate Government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

Smt. PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 15 जुलाई, 2020

का.आ. 602.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मुख्य महाप्रबंधक, बीएसएनएल, शिमला, (एचपी) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ सं. 53/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.07.2020 को प्राप्त हुआ था।

[सं. एल-40012/52/2014-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 15th July, 2020

S. O. 602.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 53/2014) of the Cent.Govt.Indus.Tribunal-cum-Labour Court as shown in the Annexure, in the industrial dispute between the employers in relation to The Chief General Manager, BSNL, Shimla, (H.P.) & Others, and their workmen which were received by the Central Government on 15.07.2020.

[No. L-40012/52/2014-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

PRESENT: SH. A.K. SINGH, PRESIDING OFFICER

ID No. 53/2014

Registered On:-01.01.2015

1. Sh. Pawan Kumar, S/o Sh. Jawahar Singh, R/o Village & Post Office Kotmorse, Tehsil Sadar, District Mandi (HP).
2. Kashmir Singh, S/o Late Sh. Tej Singh, R/o Village Dolara, Post Office Baryara, Tehsil Sadar, District Mandi (HP). ...Workmen

Versus

1. Chief General Manager, BSNL, Shimla (HP).
2. General Manager, BSNL Ltd .(T) Mandi, District Mandi, (Himachal Pradesh).
3. Sub-Divisional Engineer (SDO), BSNL Ltd., Mandi, District Mandi, Himachal Pradesh. ...Respondents/Managements

AWARD

Passed on:- 09-06-2020

Central Government vide Notification No. L-40012/52/2014-IR(DU) Dated 24.11.2014, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute related to the Department of Bharat Sanchar Nigam Ltd. for adjudication to this Tribunal:-

> **"Whether the action of the management of BSNL in terminating the of services of workmen without following the procedure laid down under Section 25-F of the ID Act, 1947 and not complying to letter dated 25.08.2000 is legal and justified? If not what relief the workman is entitled to and from which date?"**

1. The facts, in brief are that the workmen/petitioners were engaged as part time sweeper under respondent no3(SDO) Mandi and the details of engagement of the workmen/petitioners are mentioned as under:-

Sr. No.	Name	Name of Telephone Exchange Date of Engagement & Remuneration	Length of services	Date of termination
1	Pawan Kumar	Kotmorse (Year 2002) (Rs.400/-)	11years	24.05.2013
2	Kashmir Singh	Khadkalayana (Year 1999) (Rs.450/-)	14 years	31.08.2013

The workmen/petitioners were employed for sweeping work but made to work w.r.t. checking the line, receiving complaints from general public and removing the same and giving the telephone connection to the people of the respective area and maintained the line for the purpose of giving better service to the public. The Sub-Divisional Officer(SDO), Mandi, issued the retrenchment/termination notice to workmen/petitioners on the ground that the workmen/petitioners were engaged in contravention of letter dated 25.08.2000. Feeling

aggrieved and dissatisfied with the omission and commission of the establishment, the workmen/petitioners agitated the matter before this Tribunal. The strength of employees/workmen of the establishment is more than 270 and in case of retrenchment the Chapter V-A of the Industrial Disputes Act, 1947 is likely to be invoked. The notices as mentioned, is against the policy framed by the BSNL which is in existence till date as per information supplied under the right to information Act by the respondents in which, it is specifically mentioned that the workmen/employees can only be retrenched on the ground of non-availability of work and funds or in case workmen can quit the service by giving one months notice. The workmen/petitioners have completed more than 10 years of regular part time service as sweeper and now were having legitimate expectation w.r.t. the conversion of their part time engagement to whole time status. However, acting contrary, the SDO, Mandi have issued a termination notice to applicants/claimants which is contrary to the provision of Section 25-F of the Industrial Disputes Act, 1947. The reason so stated in the termination letter issued to workmen/petitioners is factually incorrect and the letter dated 25.08.2000 is a letter for regularization/grant of whole time status policy/order and it is not a ban imposed by the department. It is therefore, prayed that the retrenchment/termination of the workmen/petitioners are required to be quashed and set-aside and the workmen/petitioners may kindly be ordered to be re-engaged in service along with all consequential benefits.

2. Management has filed its written statement and denied the contents of claim petition by stating that there is no such scheme known as grant of temporary status and regularization 1989 for the grant of temporary status to part time worker is/was in force in BSNL as the scheme framed in 1989 by the Department of Telecommunication was one time scheme for those casual workers who were working at that time. The workmen/claimants were engaged as part time sweeper under SDO Mandi for doing the job for less than one hour in a day on the negotiated amount and also on need basis without following the process of recruitment. It is specifically denied that the claimants had been working for whole of the day much less even 3-4 hours a day. The workmen/claimants were not assigned any other job and they were free to do any work during the rest of the day. It is also denied that that the workmen/claimants were made to work for checking the line, receiving complaints from general public and removing the defects etc. as alleged. The workmen/claimants had not made any representation to the SDO Mandi either for the wages or for grant of the temporary status. The workmen/claimants were regularly paid their wages and no representation was received from the claimants during the period of their engagement as alleged and the management has not committed any omission or commission or acted in violation of the provisions of the Act. It is therefore, respectfully prayed that the claim petition of the workmen/claimants be dismissed and the reference may be answered in negative.

3. Workman Pawan Kumar has submitted his affidavit in evidence as Ex.A-1 and has proved documents Ex.P-1 to P-10. He has stated that he has no appointment letter and he was appointed for Safai and later on the entire work was taken from him. He has refused the suggestion that policy dated 25.08.2000 is not applicable to him. He accepted that notice was given to him prior to termination of his service but refused the suggestion that he was paid his dues including retrenchment compensation. Sh. Kashmir Singh submitted his affidavit in evidence as Ex.A-2 and has also got examined by the management-counsel.

4. Management has submitted affidavit of Vikram Jeet, DE(Admn.), in evidence as Ex.MW1/A in the line of the facts alleged in the written statement and cross-examined by the learned AR of the workmen/claimants. This witness has stated that he was posted at Mandi from 16.04.2016 as AGM. He further stated that he have knowledge about the termination of the workmen and notices sent to the respective workers. He has stated that he was not posted at that time when retrenchment compensation was given to the respective workmen. He accepted the suggestion made by the learned counsel of the workmen that workmen did not receive retrenchment compensation which is still lying with the management except Kishan Lal, who had received his compensation. He has accepted that no disciplinary action has been taken with respect to the official in the light of letter Ex.P-2 Clause 7 and also accepted that instead of taking action against the officials of the management workers were retrenched from their services. He is unable to tell the exact strength of the workmen for the work in the year 2011-2012. He has accepted that there is no copy of notice sent to the appropriate government in the file. He is unable to tell whether ban was imposed for engagement of part time employees in the year 1984-1985 in the department.

5. I have heard Sh. Devender Sharma, Ld. Counsel for the workmen/claimants and Sh. Anish Babbar, Ld. Counsel for the management and have carefully gone through the evidence led by both the parties and given thoughtful consideration raised by the learned counsels during the course of arguments.

6. Learned counsel of the workmen contended that though workmen were engaged as part time Sweeper for 3-4 hours in a day in the Telephone Exchange but were made to work for a whole day as per the direction of the officers-authority as is mentioned in Para 5 of the claim petition. Learned counsel further contended that the retrenchment/termination of the workmen were effected in contravention of letter dated 25.08.2000(Ex.P-2) by which direction is made to take action against those officials of the department who were responsible for

engaging part time employees in the establishment. Learned counsel argued that instead of taking action against the arraying officials of the department, workmen were terminated without following the provisions of Section 25-F and 25-N of the Industrial Disputes Act. Learned counsel further contended that though reference is made for illegal termination of the workmen while they were retrenched by the respondents, giving one month notice and alleged compensation. No compliance has to be done for the retrenchment vide Section 25-N of the Industrial Disputes Act, where three month notice in writing is required, indicating the reasons for retrenchment. Furthermore, prior permission from the appropriate-government for such as the case may be prescribed by the Government has been made on its behalf. Learned counsel further argued that even in case of compliance of Section 25-F(C) has not been made, which is mandatory in nature as such, the alleged retrenchment/termination is illegal and workmen are entitled for re-engagement along with all back wages and consequential relief. Learned counsel has placed reliance of the cases of ***Anoop Sharma Vs. Executive Engineer, Public Health Division No.1 Panipat(Haryana), Civil Appeal o.3478 of 2010, decided on April 9, 2010, Ajaypal Singh Vs. Haryana Warehousing Corporation, Civil Appeal No.6327 of 2014, decided on July 9,2014, Raj Kumar Vs. Director of Education and Oths., Civil Appeal No.1020 of 2011, decided on April 13, 2016, Nar Singh Pal Vs. Union of India and Oths., Civil Appeal No.2280 of 2000, decided on March 29, 2000 decided by the Hon'ble Supreme Court*** and judgment of Hon'ble Punjab & Haryana High Court in ***State of Haryana Vs. Sultan Sing & Others, CPW No.2370/2013, decided on 17.11.2014.***

7. Contrary to this, management counsel argued that workmen were engaged for 30-40 minutes per day for sweeping work in the exchange and there is nothing on record to prove that the workmen were engaged for the entire day and they performed checking of the line, receiving of the complaints from general public and removing the same and giving telephone connection as is alleged in the claim petition. Learned counsel further argued that because of the insufficient work in the exchange, workmen were terminated/retrenched from the service after giving one month notice and remuneration arising thereof. Learned counsel further argued that few workmen while received compensation few denied it as such, it cannot be argued that respondents/managements have not complied the provisions of Section 25-F of the Industrial Disputes Act which is mandatory in nature. Learned counsel further argued that there is no such scheme existing in the management for regularization of such an employee, who are part time worker. Learned counsel further argued that workmen were engaged orally without any advertisement, examination or interview for sweeping purpose and there was no substantive vacancy in the department as such, they are not entitled either for re-engagement or for regularization in the department.

8. Before averting to the legal controversy between the parties in the light of the reference, it will be desirable to mention those facts which are admitted between the parties. The engagement of workmen for sweeping purpose in exchange, dates and years of engagement, issuing of notices and compensation thereof in view of the provisions of Section 25-F of the Industrial Disputes act are almost admitted between the parties. The question which remains for consideration with respect to the real compliance of Section 25-F or 25-N of the Industrial Disputes Act, 1947 and circumstances under which workmen were retrenched/terminated from service by the management. It is also not disputed that the reference is made for deciding termination of the services of the workmen but the notice sent in compliance of Section 25-F of the Industrial Disputes Act reveals that really these workmen were retrenched from the service as is alleged in the notice itself. It is pertinent to mention that due to defective reference by the competent authority, the power of the Tribunal does not come to an end because the real controversy, if it is incidental, can be looked upon by the Tribunal. No doubt there is a difference between the termination and retrenchment and the provisions of notices are incorporated differently in Section 25-F and 25-N of the Industrial Disputes Act but the ultimate dispute of workmen are the same as they are dis-engaged from the service, which was means of livelihood of his own as well as of his family. The Hon'ble Supreme Court in catena of cases including ***Tata Iron and Steel Company Ltd. Vs. State of Jharkhand and Oths.(2014) 1 Supreme Court Cases 536,*** has held that the bounded duty of the Government to make the reference should be appropriately reflective of the exact nature of dispute between the parties. As per the Hon'ble Supreme Court though, the jurisdiction of the Labour Court/Industrial Tribunal is confined to the terms of the reference but at the same time, it is empower to go incidental issues also. In the light of the judgment of the Hon'ble Apex Court, this Tribunal is of the considered opinion that this Tribunal has power to deal with the retrenchment of the workmen along with reference regarding the termination of the employees as well.

9. Thus, it is relevant to see whether action of respondents/managements is in compliance of Section 25-F or 25-N of the Industrial Disputes Act, 1947. Section 25-F of the Industrial Disputes act, 1947 read as under:-

> ***"25-F. Conditions precedent to retrenchment of workmen-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-***

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) Notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]"

Section 25-N of the Industrial Disputes Act, 1947 read as follow:-

[25N. Conditions precedent to retrenchment of workmen-(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

10. The question which arises for consideration is as to whether the provision of retrenchment or termination is complied in letter and spirit. Perusal of the file and documents filed by the respective parties, it is clear that Divisional Engineer Administration, Bharat Sanchar Nigam Ltd., Mandi, has issued a letter Ex.P-13, stating that all PTS workers, who have been engaged after ban imposed vide letter dated 05.08.2000 for sweeping work, be retrenched in phased manner in chronological order starting from the last date of engagement as is mentioned in the letter. The Sub-Divisional Engineer, Telecom issued one month notice to workmen for retrenchment along with compensation dated 24.05.2013, stating the facts that in pursuance of the letter dated 25.08.2000 you are hereby given this notice for one month and your services will be retrenched from 24.08.2013. It is further mentioned that the concerned-workmen have to collect the compensation to which they are entitled under the provisions of Section 25-F of the Industrial Disputes Act, 1947 from the concerned Sub-Divisional Engineer. As per the Condition VIII of the letter dated 25.08.2000 Ex.P-2, it is clear that it stipulates that no part time casual labours will be engaged thereafter and any violation will result in disciplinary action. Learned counsel of the workmen argued that the respondents/managements violating the condition of letter dated 25.08.2000 engaged workmen as per needs and requirement violating the terms and conditions of the letter dated 25.08.2000 and instead taking action against erring officials, the workmen were retrenched from service by giving so called notice of one month. In this connection, learned counsel of the workmen has drawn my attention towards the statement of the sole witness of the management Vikram Jeet, DE(Admn.) in which he has admitted that workmen did not received the retrenchment compensation, which is still lying in the management except Krishan Lal, who has received this compensation. This witness has accepted that the facts alleged in the policy Ex.P-2 dated 25.08.2000 is correct and no disciplinary action has been taken with respect to the erring officials in the light of the direction incorporated in the letter itself. This witness has further accepted that instead of taking action against the officials of the management, workers were retrenched from their services. This witness has further denied any knowledge about the notice(if any) sent to the appropriate government regarding the retrenchment of the workers. According to this witness, there is no copy of the notice sent to the appropriate government in the file. This witness has further accepted that part time workers are regularized in the management as is mentioned in the Ex.P-3. Thus, the statement given by the management-witness itself proved that compliance of Section 25-F or 25-N of the ID Act for sending notice to the government or competent-authority has not been complied with in letter and spirit. There is nothing on record in the form of documentary proof that any notice is sent to the concerned-authority or appropriate government as is required in Section 25-F or 25-N of the Industrial Disputes Act, 1947.

11. It is pertinent to mention that Hon'ble Supreme Court in the case of ***M/s Empire Industries Ltd. Vs. State of Maharashtra & Ors., Civil Appeal No.3003 of 2005*** has specifically held that section 25-N is a complete scheme for retrenchment of the workmen where a number of workers are in excess of 100 workmen. In present case, as alleged, there are more than 270 workmen which has not been controverted by the management in such circumstances, non-compliance of the provision of Section 25-N is damaging to the stand taken by the management regarding the issuance of notice to the workmen. Furthermore, before issuing a notice to the workmen under Section 25-N prior permission of the concerned-authority or government has to be taken

before issuing notice to workmen. As per the Hon'ble Supreme Court, any retrenchment of the workmen can only be done under the provisions laid down under the Act and Rules. So far as sending notice to the competent-authority or the government under Section 25-N is concerned. It has not been duly complied as per the evidence on record. Hon'ble Supreme Court in the case of ***Ajaypal Singh Vs. Haryana Warehousing Corporation, Civil Appeal No.6327 of 2014, decided on July 9,2014*** and in the case of ***Raj Kumar Vs. Director of Education and Oths., Civil Appeal No.1020 of 2011, decided on April 13, 2016,*** has held that Industrial Disputes Act, 1947 is a beneficial legislation and its object is for settlement of the Industrial Disputes. It provides unfair labour practice on the part of the employer in case of engaging employees/temporary employees for a long period without giving the status of permanent employees. As per the Hon'ble Supreme Court the condition mentioned in Section 25-N of the Industrial Disputes Act is mandatory and it mandates the employer to serve a notice in the proper manner for the appropriate government or such authority as is specified by the appropriate government by notification in the official gazette. Same view is reiterated by the Hon'ble Supreme Court in the case of ***Raj Kumar(supra).*** As per the Hon'ble Court, since mandatory condition for retrenchment were not complied with retrenchment is liable to be set aside. In nutshell, it can be observed in the light of the judgment of the Hon'ble Apex Court that the nature of notice envisaged under Section 25-F and 25-N of the Industrial Disputes Act, 1947 is not derogatory but mandatory and employer/respondents-managements were duty bound to comply the procedure laid down in Section 25-F and 25-N in letters and spirit before terminating/retrenchment of the services of the workmen.

12. Learned counsel of the respondents/managements argued that management has complied the provision of Section 25 of the Industrial Disputes Act and apart from sending notice, compensation is offered to each workmen and few has accepted while few has not accepted. As per argument of management-counsel, this issue cannot be raised in Tribunal by virtue of principal of estoppell. So far as the receiving or non-receiving of the compensation is concerned, learned counsel of workmen argued that if the compliance of Section 25-F or 25-N of the Industrial Disputes Act, 1947 is defective or not complied with then question of acceptance or non-acceptance of the compensation become irrelevant because before giving retrenchment compensation notices are required to be sent in the manner specified therein. In this connection, learned counsel has drawn my attention towards the judgment of the Hon'ble Supreme Court in the case of ***Nar Singh Pal Vs. Union of India and Oths., Civil Appeal No.2280 of 2000, decided on March 29, 2000,*** in which the argument of the management is nullified by the Hon'ble Supreme Court by observing that acceptance of compensation does not close the right of the workmen to challenge the retrenchment because this concept is erroneous and is not correct one. As per the Hon'ble Supreme Court, the casual labour who served for a long time does not surrender all his consequential rights in favour of the respondents/managements. As per the Hon'ble Supreme Court, fundamental rights under the Constitution cannot be barred away and it cannot be compromised or there cannot be estopple of the fundamental right available under the Constitution. Thus, the argument advanced by the learned counsel of the management for acceptance of compensation and principle of estoppel has no force and liable to be rejected.

13. Now the residual question is whether the claimants/workmen are entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. It is proved on record that the claimants are working as part time Sweeper in the managements/respondents for the last 10 to 14 years prior to their termination on 31.08.2013. There is no legal show cause notice or charge-sheet issued to the claimants/workmen by the respondent/management. Moreover, the job of the claimants/workmen to do cleaning, sweeping of the premises of the respondent/management is of perennial and regular in nature. **It is pertinent to mention that claimants/workmen have not pleaded and testified that they are totally unemployed since their termination/retrenchment.**

14. The Hon'ble Apex Court in case ***"Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya"*** reported as (2013) 10 SCC 324 has held as under :

> ***"The propositions which can be culled out from the aforementioned judgments are:***
>
> *(i)* ***In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.***
>
> *(ii)* ***Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman wads gainfully employed and was getting wages equal to the wages he/she wads drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its***

existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

15. The Hon'ble Apex Court also held that different expressions are used for describing the consequence of termination of a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometime as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F (a) and (b) has the effect of rendering the action of the employer and nullity and the employee is entitled to continue in employment as if his service was not terminated. ***(Anoop Sharma Vs. Executive Engineer, Public Health Division No.1 Panipat (2010) 5 SCC 497).***

16. A Bench of three Judges of the Hon'ble Supreme Court in the case of ***Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80*** held that relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the act of employer is found to be totally illegal and arbitrary, in that eventuality the workman is required to be reinstated, with full back wages. Plain common sense also dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen alongwith payment of back wages.

17. However, Hon'ble Apex Court in the case **General Manager, Haryana Roadways Vs. Rudan Singh, reported as 2005 SCC (L&S) 716** observed as under :-

"8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at this age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year."

18. Yet in another latest case of **Bholanath Lal and others Vs. Shree Om Enterprises (P) Ltd., Manu/DE/1922/2018** (decided on 10/5/2018), Hon'ble High Court of Delhi while considering the question of illegal termination and reinstatement held as under:-

"The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same The courts must always keep in view that that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee./workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/ workman his dues in the form of full back wages."

A similar view has been taken in the case of **Delhi Jal Board Vs. Vimal Kumar (decided on 5-4-2018) MANU/de/1322/2018** wherein service of a casual driver was terminated without any notice or

payment of one month's salary in lieu of such notice. The Industrial Tribunal answering the reference held the action of the management to be illegal and in violation of Section 25-F of the Act. The Award was upheld by Hon'ble High Court of Delhi by observing as under:-

"In view of the above discussion, I am unable to discern any illegality or infirmity in the impugned Award, dated 29th May, 2003, of the Labour Court, to the extent that it holds the termination of the services of the respondent, by the petitioner, to be illegal and unlawful. I am entirely in agreement with the finding, of the Labour Court, that the services of the respondent were retrenched in violation of Section 25-F of the ID Act and that, therefore, he was entitled to be reinstated in service with all consequential benefits. In view of the fact that going by the age of the respondent as disclosed in the counter affidavit filed before this Court, he would, today, be only 50 years of age, and also in view of the fact that the termination of his services as SCM Driver was not on account of any deficiency or shortcoming detected in the manner of discharge by the respondent, of his duties as such, I am of the opinion, that the facts of the present case, do not warrant any interference with the direction, of the Labour Court, to the petitioner to reinstate the respondent in service with the benefit of continuity of service. The petitioner is, therefore, directed to reinstate the respondent in service forthwith.

Inasmuch as the respondent has not been rendering any service to the petitioner since the date of his termination, however, the back wages payable to the respondent would be limited to 50 per cent of the wages which he would have drawn he had continued to serve the petitioner….."

19. Having regard to the legal position as discussed above and the facts that the workmen/claimants herein were performing duties of regular and perennial nature, this Tribunal is of the firm view that the workmen/claimants have been terminated without following the procedure laid down under Section 25 of the ID Act. It is pertinent to mention that they have neither pleaded nor testified that they are totally unemployed since their termination/retrenchment. Hence, they are entitled for reinstatement into service on the same post from the date of their termination/retrenchment with 50% back wages, inasmuch as termination of the workmen/claimants are per-se illegal. Award is passed accordingly.

A. K. SINGH, Presiding Officer

नई दिल्ली, 20 जुलाई, 2020

का.आ. 603.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ सं. 09/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 20.07.2020 को प्राप्त हुआ था।

[सं. एल-12011/13/2017-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 20th July, 2020

S. O. 603.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 09/2017) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Canara Bank, and their workmen, received by the Central Government on 20.07.2020.

[No. L-12011/13/2017-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 10TH JULY, 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 09/2017

I Party	**II Party**
1. Sh. Urban G Furtado, C/o Lazer D Mello, Door No. 2409, JMG Cottage, 1st Stage, 1st Cross, Rajeevnagar, Mysore - 570019.	The General Manager, Canara Bank, Personnel Wing, Head Office, J.C. Road, Bangalore - 560002.
2. Sh. H. Gonsalves, President, Mysore Division General Labour Union, No. 41, 1st Cross, R.N. Pura, Mysore - 570019.	

Appearance

Authorised Representative for I Party : Mr. H. Gonsalves

Advocate for II Party : Mr. T. R. K. Prasad

AWARD

The Central Government vide Order No. L-12011/13/2017-IR(B-II) dated 08.05.2017 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the action of the management of Canara Bank, Bangalore in awarding punishment of Compulsory Retirement to sh. Urban G Furtado, who was acquitted from the charges by the court is legal and justified? If not, to what relief the workman was entitled to and from which date?"**

1. The fact is, the 1st party workman joined the 2nd party as a Sub-Staff in the year 28.09.1998 and served till his Compulsory Retirement on 29.03.2008; he was imposed the punishment of Compulsory Retirement since the charges against him came to be proved in a Departmental Enquiry; the main grievance on which the dispute is raised is, the workman having been absolved of the charges on the same set of allegations from a jurisdictional Criminal Court (in Appeal by the Principal Districts and Sessions Judge, Shimoga in Crl. A. No. 37/2011) the 2nd party should not have imposed punishment on him.

2. In his claim statement though he had made certain remarks against the mode of enquiry, subsequently gave up his challenge to the procedure of enquiry, hence the Preliminary Issue raised in respect of fairness of Domestic Enquiry is answered in the affirmative upholding the correctness of the enquiry procedure. The records produced by the 2nd Party are marked as Ex M-1 to Ex M-11.

The 1st party contends that the enquiry report is without application of mind and with a pre-considered notion; the 2nd party failed to follow previous Awards and Bipartite Settlement; the punishment order is harsh and he is made to suffer loss of job.

3. The 2nd party has contested the claim and seeks to justify the action taken against the workman.

4. In view of the above, it is required to travel through enquiry records to ponder whether there was sufficient evidence before the Enquiry Officer to return the finding of guilt against the 1st party.

5. To put the allegation in a nutshell,

While working as Sub-staff at Nehru Road Branch, Shimogga the 1st Party has stolen the ATM Cum Debit Cards and withdrawn the amount from the accounts of Smt. Geetha S Rai and Sh. Maqbool Ahmed. The Account holder had applied for the ATM Cum debit cards and the cards were embossed / issued by the Debit Card Cell, Issue Section, Cancard Division of the 2nd party and sent to the Branch along with the envelopes containing PIN. The Account holders denied having received the ATM Cards and denied of having withdrawn the amount from their respective account through their ATM Cum Debit Card.

He gained access to the pending ATM cum Debit cards unauthorisedly misusing his official position, took the ATM Cum Debit Card along with related PIN covers; he remained absent on 15th and 16th of December 2005; on 15.12.2005 through ATM at Margoa he drew Rs. 4,000/- twice from NRE SB Account 40326 of Maqbool Ahmed and made balance enquiry about Geetha S Rai's Account; again on 24.12.2005 onwards he remained absent from duty; on 27.12.2005 through Nazarbad, Mysore ATM he made balance enquiry regarding his Account and Geetha Rai's Account, drew Rs. 200/- from his personal account; on 28.12.2005 he drew Rs. 1,000/- from Maqbool Ahmed account and made balance enquiry regarding his personal account as well as Geetha S Rai's Account; on the same day through ATM at New Statue square Mysore, he drew Rs. 10,000/- and Rs. 5,000/- from Geetha S Rai's Account; on 28.12.2005 he drew Rs. 2,000/- from his personal account and Rs. 10,000/- and Rs. 4,000/- from Geetha S Rai's Account through ATM at Traffic Island, Hubli; on 30.12.2005 he made balance enquiry about his account at Panaji ATM and withdrew Rs. 10,000/- and Rs. 4,000/- from Geetha S Rai's Account. He has withdrawn Rs. 10,000/-, Rs. 4,000/-, Rs. 1,000/- on 01.01.2006 through Panaji Goa, ATM from Geetha S Rai's Account; on 04.01.2006 he drew Rs. 10,000/- and Rs. 4,000/- from Geetha S. Rai's Account through ATM at Mumbai Central. On 06.01.2006 he withdrew Rs. 10,000/- and Rs. 4,000/- from Geetha S Rai's Account. Thus, stole Rs. 1,00,000/- from the SB Account 49147 of Geetha S Rai and Rs. 9,000/- from NRESB 40326 of Maqbool Ahmed.

6. As such there was no direct eye witness either to the incident of stealing the ATM Card or withdrawal of the Cash from the respective ATMs. The Bank has clarified that at the relevant period CCTV was not fixed in the ATM Booths of the 2nd party.

7. The 1st party participated in the enquiry along with his Defence Representative. Six witnesses were examined for the prosecution and 24 documents were marked.

The Complaint lodged by the Manager of the Bank to the jurisdiction Police is marked as Dex-1. The Enquiry Officer in the absence of the direct evidence has drawn inference on the basis of the incriminating circumstances surfacing from the material collected by the Investigating Officer. Those incriminating circumstances are -

(i) The 1st party had enquired the balances before drawing the money from his personal account so also from the Accounts of Smt. Geetha S Rai's and Maqbool Ahmed

(ii) The timings recorded was in a short / slip of a minute and there was no scope for a 3rd person to approach ATM by that fastness.

That led Enquiry Officer to suspect that same person had access of all the three accounts at different places simultaneously.

8. For fixing the vicarious liability of the misconduct the Enquiry Officer as relied on the following facts:

(i) The CSE was on unauthorised absence on the relevant dates

(ii) The reasons assigned by him for his absence was financial trouble

9. The defence that the CSE does not know operation of ATM, was rejected by the Enquiry Officer since the Investigating Report indicated that he had previously accessed his account 13 times through ATM between 01.07.2004 to 01.12.2005.

Another fold of defence was the CSE had lost his Card somewhere in October 2005 since he was not serious about that, had not given complaint. But the above defence was also not acceptable to the Enquiry Officer, in the absence any complaint being lodged in the Branch or any evidence brought through witnesses who used to assist him to operate ATM.

10. The defence that there was no complaint from the Account holders of the Branch was found incorrect since complaint was addressed by Smt. Geetha S Rai to the Branch and the Manager had forwarded the same to the Central Office, the copy of said complaint was marked as Mex-14. The Enquiry Officer presented the original of the said complaint might have been sent to the Investigating Officer. The letter addressed to the Investigating Officer by the Branch Manager that on inquiry over telephone Sh. Maqbool Ahmed said that he had applied for ATM but has not received the same is marked as Mex-12. In his complaint Mex-17 said Maqbool Ahmed had alleged that remittances sent to his account for 2 months is not acknowledged from the Bank, he has not received the details of the outstanding balance in his account and housing loans – meanwhile one of his cheque submitted to the Bank also bounced. This evidence is brought on record through MW-5 who had investigated into the matter.

Though both Account holders were not brought before enquiry, the Investigating Officer's evidence sufficed to hold that Smt. Geetha S Rai who was staying outstation had addressed a letter to him and had

confirmed the contents of the letter from the Branch. Investigating Officer had also obtained confirmation from the Branch on cross verification with regard to the Revelations made by Mr. Maqbool Ahmed regarding unauthorised withdrawal of Rs. 9,000/- from the ATM.

11. It was the evidence of MW-6 the then Manager of the Branch that, he had handed over ATM Card with cover containing PIN to confirm the activation, that steered the Enquiry Officer to infer that CSE was in possession of ATM Card and the covers containing the PIN and he had access to the Strong Room. In respect of his absence period, though he had applied for leave on medical ground he had not submitted any medical certificate. The leave application was filed only after a letter dated 31.01.2006 Ex Mex-2 was served on him for remaining absent w.e.f. 24.12.2005 onwards.

1st Party's contention that because of threat to his life it was natural to flee away was held to be contradicted by his own defence wherein he had contended, that though he was available in the Branch, the Investigating Officer did not make effort to contact him.

MW-3 / the Manager had identified his hand writing in the Book of inward / delivery of ATM cards and he had not complained about the loss of his ATM Cards to the Superior Officials. All the technical objections raised by the defence about the veracity of the documents marked in the enquiry and the timing of operation not tallying with the documentary proofs were suitably over ruled by the Enquiry Officer.

12. I am convinced that the Enquiry Report flows from judicious analysis of the circumstantial evidence without borrowing any extraneous material. Now it is no more Res-integra that acquittal from the Criminal Court on the same set of allegations/charges need not be followed by automatically bailing out the CSE of the charges in a Domestic Enquiry.

13. In the judgment of Karnataka Power Trans. Corp. Ltd. ... vs Sri C Nagaraju on 16 September, 2019 Civil Appeal No. 7279 of 2019 (Arising out of SLP (C) No. 25909 of 2013) it was held that, *"…. the acquittal by a Criminal Court does not preclude a Departmental Inquiry against the delinquent officer. The Disciplinary Authority is not bound by the judgment of the Criminal Court if the evidence that is produced in the Departmental Inquiry is different from that produced during the criminal trial. The object of a Departmental Inquiry is to find out whether the delinquent is guilty of misconduct under the conduct rules for the purpose of determining whether he should be continued in service. The standard of proof in a Departmental Inquiry is not strictly based on the rules of evidence. The order of dismissal which is based on the evidence before the Inquiry Officer in the disciplinary proceedings, which is different from the evidence available to the Criminal [13] Court, is justified and needed no interference by the High Court".*

Unfortunately, the 1st Party has not produced the records pertaining to the Criminal Case to demonstrate that the evidence adduced in the Criminal Case was identical to the evidence adduced during the Domestic Enquiry.

14. After getting the reply of the 1st party on the Enquiry proceedings the Disciplinary Authority proposed the punishment of Dismissal without notice. Considering his submissions made during the personal hearing the punishment of *"Compulsory Retirement with superannuation benefit i.e. Pension and / or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification for future employment"* was passed vide its considered order dated 25.03.2008. It is obvious from the order that the Disciplinary Authority has applied its mind independently to the enquiry material while accepting the Enquiry Report. The Appellate Authority rejected the appeal vide its considered order dated 31.03.2009.

15. Though the 1st Party had not adduced rebuttal evidence during the enquiry, the Enquiry Officer has gone on to consider his defence built up during his reply to the charge sheet, cross examination of the management witnesses, submissions made by the Defence Representative and written brief submitted for him. The Enquiry Report has considered each bit of the defence while holding him guilty of the charges. The Disciplinary Authority in the given circumstance was well within its propriety in imposing the punishment of Compulsory Retirement. Hence, the dispute raised for the workman is without merit.

AWARD

The Reference is rejected.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 10th July, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 20 जुलाई, 2020

का.आ. 604.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक आफ बड़ौदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ सं. 22/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 20.07.2020 को प्राप्त हुआ था।

[सं. एल-12011/14/2017-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 20th July, 2020

S. O. 604.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 22/2017) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda,, and their workmen, received by the Central Government on 20.07.2020.

[No. L-12011/14/2017-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M. V. Deshpande, Presiding Officer

REFERENCE NO. CGIT-2/22 of 2017

EMPLOYERS IN RELATION TO THE MANAGEMENT OF BANK OF BARODA, BARODA CORPORATE CENTRE

The General Manager,
Bank of Baroda, Baroda Corporate Centre,
Bandra Kurla Complex,
Mumbai – 400 051.

AND

THEIR WORKMEN

The General Secretary,
Bank of Baroda Karmachari Sena,
10/12, Bank of Baroda Building [MMO],
Mezzanine Floor, Mumbai Samachar Marg,
Mumbai – 400 001.

APPEARANCES:

FOR THE EMPLOYER	:	Mr. L.L. D'souza, Representative
FOR THE WORKMEN	:	Mr. A.K. Menon, Advocate

Mumbai, dated the 16th January, 2020

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-12011/14/2017-IR (B-II) dated 15.05.2017. The terms of reference given in the schedule are as follows :

> *"Whether the demand of the Bank of Baroda Karamchari Sena for passing 33% failed graduate sub staff in the interview held in October, 2015 for promotion to the Clerical Cadre in alleged violation of clause No. 8.1 of the Settlement dated 27.09.2012, is just and proper ? If so, what relief to the workmen are entitled to ?''*

2. After the receipt of the reference, both the parties were served with the notices.

3. On going through the Roznama, it appears that the second party union is absent since long and after filing statement of claim, the matter was kept for filing written statement. It was brought to the notice that it was necessary to correct the reference since schedule of reference is in respect of the demand of the Bank of Baroda Karamchari Sena for passing 33% failed graduate sub staff in the interview held in October, 2015 for promotion to the Clerical Cadre in alleged violation of clause No. 8.1 of the Settlement dated 27.09.2012 or not. In para – 2 of the statement of claim filed by the union it has been stated that no interviews were held in Oct. '15 for promotion to the clerical cadre and the schedule of reference has been erroneously drafted.

3. In view of that the reference was kept for correction of schedule of reference but no any correction is made to the schedule of reference.

4. No one is appearing on behalf of the union for taking steps. So for want of evidence due to in action on the part of union the reference is liable to be rejected. Hence order.

ORDER

Reference is rejected for want of evidence due to in inaction on the part of union for taking steps in respect of correction of schedule of reference.

Date: 16.01.2020

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 20 जुलाई, 2020

का.आ. 605.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सैन्ट्रल बैंक आफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकत्ता के पंचाट (संदर्भ सं. 16/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 20.07.2020 को प्राप्त हुआ था।

[सं. एल-12011/16/2004-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 20th July, 2020

S. O. 605.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 16/2004) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the management of Central Bank of India and their workmen, received by the Central Government on 20.07.2020.

[No. L-12011/16/2004-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 16 of 2004

Parties: Employers in relation to the management of Central Bank of India

AND

Their workmen

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management : Mr. G.C. Chakraborty, Learned Counsel.

On behalf of the Workmen : Mr. C.R. Kanjilal, Vice President of the Union.

State: West Bengal. Industry: Banking

Dated: 24th June, 2020

AWARD

Factual matrix of the case is that the workman, Shri Salil Kumar Saha was appointed as Cash Clerk in Central Bank of India in October, 1975. Thereafter he was promoted as an officer of the Bank (JM-1) on 2nd May, 1985. While working as Branch Manager of Ramnathpur Branch he was issued a chargesheet on the ground that he allowed credit facilities without obtaining any prime or collateral security and that he allowed clean overdraft beyond his discretionary power without obtaining sanction from the higher authority and he did not report this unauthorized advance to the higher authority. Several other charges were also leveled against him. The workman participated in the enquiry and after conclusion of enquiry the Enquiry Officer submitted his report holding all charges, except charge no. 6, 7 and 14 as proved. The disciplinary authority agreeing with the conclusion of the Enquiry Officer awarded a consolidated punishment of reduction to a lower grade viz. from JM-1 to Clerk. This punishment gave rise to an industrial dispute and after failure of conciliation proceeding, the reference has been made by the Central Government in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 vide Order No. L-12011/16/2004-IR(B-II) dated 31.05.2004 in following words:

> *"Whether the action of the management of Central Bank of India to impose the punishment of reduction to a lower grade from JM-1 to Clerk to Shri Salil Kumar Saha as per Clause 4(E) to CBIOE (D&A) regulations 1976 is justified or not? If not, what relief the workman is entitled to?"*

2. The domestic enquiry was challenged by the workman concerned on the ground that principles of natural justice were not followed at the time of awarding punishment. As validity of enquiry has been challenged by the workman concerned, this was taken up as preliminary issued and decided by this Tribunal on 1st May, 2019 holding the domestic enquiry legal and proper.

3. After the domestic enquiry is held to be valid and proper, next question arises as to what is the scope of interference by the Tribunal. Initially the industrial tribunal had very little scope to interfere with the findings of the Enquiry Officer. However, later on Section 11-A was inserted in the Industrial Disputes Act, 1947, hereinafter called as the Act of 1947 for convenience, wherein it has been provided that the Industrial Tribunal has power to reappraise the findings of domestic enquiry. But, as it is clear from the opening line of Section 11-A of the Act of 1947 provisions of Section 11-A are not applicable to the cases other than dismissal, discharge or termination. Admittedly, the instant case is not of dismissal, discharge or termination of the workman. The punishment awarded to the workman concerned was reversion to clerical grade from JM-1. The above position of application of Section 11-A of the Act of 1947 has also been explained in **Management of State Bank of India** v. **Industrial Tribunal – 1**, 2006 (1) ALT 39 (AP) wherein it has been observed –

> *"26. Since Section 11-A relates only to cases of discharge or dismissal of workmen, in cases where a penalty other than discharge or dismissal is imposed i.e. except in cases where the services of an employees is terminated, the provisions of Section 11-A are not applicable and the law as it stood prior to Section 11-Awould alone be required to be followed."*

4. On the jurisdiction of Industrial Tribunal to interfere with the punishment order, Hon'ble the Supreme Court has also explained the position in **Indian Iron and Steel Co. Ltd.** v **Their Workmen**, AIR 1958 SC 130 as follows:

> *"…..Undoubtedly, the management of a concern has power to direct its own internal administration and discipline, but the power is not unlimited and when a dispute arises, Industrial Tribunals have been given the power to see whether the termination of service of a workman is justified and to give appropriate relief. In cases of dismissal on misconduct, the Tribunal does not, however act as a court of appeal and substitute its own judgment for that of the management. It will interfere (i) when there is a want of good faith (ii) when there is victimization or unfair labour practice(ii) when the management has been guilty of a basic error of violation of principles of natural justice, and (iv) when on the materials, the findings is completely baseless or perverse… …."*

5. In **Management of State Bank of India** v. **Industrial Tribunal** (supra) the scope of judicial review of the Industrial Tribunal in cases of punishment other than dismissal, discharge or termination has been summed up as follows:

> *"27. Prior to introduction of Section 11-A, once the domestic enquiry conducted by an employer was held to be valid, the Tribunal had no power to interfere with the findings recorded in the domestic enquiry except under certain limited circumstances as laid down in Indian Iron and Steel Co. case (supra) and the conclusion arrived at by the disciplinary authority regarding the misconduct having been proved and the punishment to be imposed thereupon were all considered to be managerial*

functions which the Tribunal had no power to interfere with, unless the findings were perverse or the punishment was so harsh as to lead to inference of victimization or unfair labour practice.

28. The position underwent a drastic change subsequent to incorporation of Section 11-A. Pursuant thereto, even in cases where the employer has held a proper and valid domestic enquiry, the Tribunal is now at liberty to consider not only whether the findings on misconduct recorded by an employer are correct, but also to differ from the said findings, if a proper case is made out. What was once largely in the realm of the satisfaction of the employer, has ceased to be so and now it is the satisfaction of the Tribunal that finally decides the matter (The Workmen of Firestone Tyre and Rubber Co. of India P. Ltd. v. The Management)"

6. To sum up on the point of interference by the Industrial Tribunal, the power can be exercised only (1) when there is want of good faith; (2) when there is victimization or unfair labour practice; (3) where the management is guilty of basic error of violation of principles of natural justice or lastly (4) when the finding of the Enquiry Officer is baseless or perverse.

7. Now coming to the instant case, nothing has been said by the workman concerned regarding *mala fide* intention of the employer or victimization or unfair labour practice. Even there is no allegation in the statement of claim that finding of the Enquiry Officer is perverse. The workman concerned has only pleaded that there was violation of the principles of natural justice at the time of infliction of punishment in as much as copy of enquiry report was not supplied to him and he was removed from the post of Branch Manager and was made Recovery Officer without holding domestic enquiry. This point has already been dealt with while discussing with validity of the enquiry.

8. The test of perversity has been laid down by the Hon'ble Supreme Court in **Central Bank of India, New Delhi** v. **Prakash Chandra Jain**, 1969-II-LLJ 1968 where the Hon'ble Court has observed that the test of perversity is that the finding may not be supported by legal evidence or when the findings are such no reasonable person would have arrived at on the basis of materials before him. In the instant case the workman concerned had been charged with exceeding authority in making advances. While dealing with this point the Enquiry Officer has found on the basis of bank records that the workman concerned had sanctioned loan beyond his authority. The quantum of loan which could have been sanctioned by the Branch Manager was 50% of the potatoes stored based on average market price, maximum upto Rs.5000/= per unit, but he exceeded that limit. It is also found by the Enquiry Officer that in most of the accounts there were incomplete address of the borrowers written in the ledger, documents and loan application forms. Even full name of the borrowers have not been mentioned in some of the cases. It is also found by the Enquiry Officer that he had also recommended the P.F loan of Mr. M. Hansda without verifying the records. He had mentioned that Mr. Hansda has repaid Rs.9500/= whereas, in fact, he had repaid the previous loan for Rs.3,420/= only and the balance outstanding in the previous P.F. loan was Rs.11,861/= Thus he misrepresented the fact in the P.F. loan application form by showing recovery of Rs.9500/= in order to accommodate the staff concerned unauthorizedly. Thus it cannot be said that the findings of the Enquiry Officer are not supported by material on record. Thus the findings can also not be said to be perverse.

9. The workman concerned was an officer of the bank. He was expected to exercise high standard of honesty and integrity. Dealing with responsibility of a bank officer the Hon'ble Supreme Court in **Damua Panna Sagar Rural Regional Bank** v. **Munnalal Jain**, Civil Appeal No. 8258 of 2004 has observed as follows:

"A Bank officer is required to exercise higher standard of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the Bank is required to take all possible stepsto protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik (1996 (9) SCC 69), it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a Bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court."

10. In view of above, I have no hesitation to say that the workman concerned failed to observe the standard of integrity expected from a bank officer. Hence his reversion to the post of Recovery Officer cannot be said to be disproportionate to the charge leveled against him. Therefore, I come to the conclusion the action of the

management of Central Bank of India to impose the punishment of reduction to a lower grade from JM-1 to Clerk to Shri Salil Kumar Saha as per Clause 4(E) to CBIOE (D&A) regulations 1976 is justified. The workman concerned is not entitled to any relief and the reference is answered as above.

11. Award is passed accordingly.

JUSTICE RAVINDRA NATH MISHRA, Presiding Officer

नई दिल्ली, 20 जुलाई, 2020

का.आ. 606.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक आफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकत्ता के पंचाट (संदर्भ सं. 25/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 20.07.2020 को प्राप्त हुआ था।

[सं. एल-12011/11/2013-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 20th July, 2020

S. O. 606.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 25/2013) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the management of Union Bank of India and their workmen, received by the Central Government on 20.07.2020.

[No. L-12011/11/2013-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 25 of 2013

Parties: Employers in relation to the management of Union Bank of India, Nodel Regional Office

AND

Their workmen

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the workmen : Mr. J. Chakraborty, Vice President of the union

On behalf of the management : Mr. K.S. Hareesh Kumar, Chief Manager of the Bank

State: West Bengal. Industry: Banking

Dated: 24th June, 2020

AWARD

Brief facts of the case are that the workman concerned, Shri Sudhangshu Ranjan Das was appointed in the Union Bank of India as Clerk cum Cashier on 4th June, 1982. At the relevant point of time he was working at Salt Lake City Branch at Kolkata. On 4th February, 2010 the Assistant Manager of the Branch, Shri Tarak Nath Basak gave a complaint that on 4th February, 2010 at around 3.30 P.M. the workman concerned rushed violently in his cabin and abused him and slapped him in presence of the customers. Senior Manager of the Branch Shri Subhra Mukhopadhyay tried to pacify both of them. The workman concerned at the beginning agreed for the written apology to Shri Basak, but later he refused it. As the matter could not be settled amicably at the

branch level, the complaint of Shri Basak was forwarded to the Regional Office. The workman also made a counter complaint against Shri Basak whereupon Shri A.D. Patel, Assistant Manager visited the branch for an investigation into the incident. On submission of report by Shri A.D. Patel a show cause notice was issued to the workman concerned for his serious act of indiscipline. His reply being found not satisfactory, a formal chargesheet was issued to him on 24th February, 2010 and an Enquiry Officer was also appointed. The workman concerned participated in the enquiry. He also produced defence witnesses. At the conclusion of enquiry, report was submitted to the disciplinary authority by the Enquiry Officer holding that the charges leveled against the workman were proved at enquirySS. Opportunity of personal hearing was also given to the workman concerned and thereafter the disciplinary authority after considering all the materials on record and reply of the workman concerned, passed order of punishment of dismissal from service on 6th December, 2010 against which the workman concerned preferred an appeal. The appeal was also dismissed by the appellate authority on 17th June, 2011. The order of punishment of dismissal from service gave rise to an industrial dispute and after failure of conciliation proceeding, the Central Government in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 vide Order No. L-12011/11/2013-IR(B-II) dated 15.04.2013 referred the dispute to this Tribunal for adjudication in the following terms:

> *"Whether the action of the management of Union Bank of India having Nodal Regional Office, Aelpe Court, 1st Floor, 225/C, AJC Bose Road, Kolkata – 700020 in dismissing the service of Shri Sudhangshu Ranjan Das w.e.f. 6.12.2010 is justified and legal? What relief the workman is entitled to?"*

2. The workman concerned challenged the validity of domestic enquiry on the ground that preliminary objections raised by the defence representative were not decided by the Enquiry Officer. It is also alleged that the Enquiry Officer submitted unreasoned report to the disciplinary authority and acted as a witness of the management. The findings of the Enquiry Officer are also alleged to be perverse and not based on evidence on record. As the validity of enquiry has been challenged by the workman concerned, this point was taken up as preliminary issue and decided by this Tribunal on 28th May, 2019 holding that there was no violation of the principles of natural justice and also that the findings of the Enquiry Officer are not perverse.

3. After the domestic enquiry is held to be valid and proper, next question arises as to the scope of interference by the Tribunal. Initially the Industrial Tribunal has very little scope to interfere with the findings of the Enquiry Officer. However, later on Section 11A was inserted in the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act of 1947 for convenience) wherein it ha been provided that the Industrial Tribunal has power to reappraise the findings of domestic enquiry. According to Section 11A of the Act of 1947 the Industrial Tribunal can set aside the order of discharge or dismissal and direct reinstatement of the workman, if it is satisfied that the order of dismissal or discharge was not justified.

4. The scope of judicial review by Industrial Tribunal has been analyzed by the Hon'ble Supreme Court in **Nirmala J. Jhala** v. **State of Gujarat & Another**, CDJ 2013 SC 216 in following terms -

> *"It is settled legal proposition that judicial review is not akin to adjudication on merit by re-appreciating the evidence as an Appellate Authority. The only consideration the Court/Tribunal has in its judicial review, is to consider whether the conclusion is based on evidence on record and supports the findings or whether the conclusion is based on no evidence. The adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the Court in writ proceedings."*

5. The Hon'ble Supreme Court has further observed that

> *"The decision referred to hereinabove highlights clearly, the parameter of the Court's power of judicial review of administrative action or decision. An order can be set-aside if it is based on extraneous grounds, or when there is no grounds at all for passing it or when the grounds are such that, no one can reasonably arrive at the opinion. The Court does not sit as a Court of Appeal but, it merely reviews the manner in which the decision was made. The Court will not normally exercise its power of judicial review unless it is found that formation of belief by the statutory authority suffers from malafides, dishonest/corrupt practice. In other words, the authority must act in good faith. Neither the question as to whether there was sufficient evidence before the authority can be raised/examined, nor the question of re-appreciating the evidence to examine the correctness of the order under challenge. If there are sufficient grounds for passing an order, then even if one of them is found to be correct, and on its basis the order impugned can be passed, there is no occasion for the Court to interfere."*

6. Even if a finding of Enquiry Officer does not suffer with any illegality or perversity, Tribunal has jurisdiction under Section 11A of the Act of 1947 to interfere, if it is satisfied that the order of discharge or

dismissal was not justified. In catena of cases, it has been held that the action of the management must conform with proportionality of gravity of offence.

7. In **Muriadih Colliery** v. **Bihar Colliery Kamgar Union**, 2005 (3) SCC 331 the law has been laid down by the Hon'ble Supreme Court as follows –

> *"It is well established principle in law that in a given circumstance it is open to the Industrial Tribunal acting under Section 11A of the Industrial Disputes Act, 1947 has the jurisdiction to interfere with the punishment awarded in the domestic enquiry for good and valid reasons. If the Tribunal decides to interfere with such punishment, it should bear in mind the principle of proportionality between the gravity of the offence and the stringency of the punishment."*

8. In **Life Insurance Corporation of India** v. **R. Dandapani**, 2006(108) FLR 953 it has been observed by the Hon'ble Apex Court that the Tribunal has power to reduce the quantum of punishment, but power under Section 11-A has to be exercised judiciously and the Industrial Tribunal or Labour Court Is expected to interfere with the decision of the management only when it is satisfied that the punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned.

9. In **Management of Bharat Heavy Electricals** v. **M. Mani & Others**, 2018 LLR 2(SC) Hon'ble the Apex Court has held that where a departmental enquiry is held to be legal and proper then the only question remains for consideration is whether the punishment of dismissal is required any interference. Relevant portion of the judgment may be quoted as below:

> *"18. In other words, the Labour Court should have then confined its enquiry to examine only one limited question as to whether the punishment given to the respondents was, in any way, disproportionat to the gravity of the charge leveled against them and this, the Labour Court should have examined by taking recourse to the provisions of Section 11-A of the Industrial Disputes Act, 1947. ... ..."*

10. Thus the jurisdiction to interfere with the quantum of punishment can be exercised only when it is found to be grossly disproportionate. In the present case it has been seen that the workman concerned has not only used abusive language, but also assaulted the Manager of the Branch at bank premises in the presence of not only bank staff but also customers of the Branch. Thus the workman concerned committed high degree of indiscipline at work place which has been regarded as a matter of prime concern. Therefore, punishment of dismissal from service cannot be said to be disproportionate so as to shock one's conscience. In Muriadih Colliery case (supra) two workmen alongwith others armed with deadly went to the General Manager and assaulted him causing injuries to him and his colleagues. The Court considered it as an act of gross indiscipline.

11. Similarly, in **M.P. Electricity Board** v. **Jagadish Chandra Sharma**, (2005) 3 SCC 401 the employee was found guilty hitting and injuring his superior at workplace in presence of other employees. The Hon'ble Supreme Court held that this clearly amounted to breach of discipline of the organization. Relevant portion of the judgment is as follows:

> *"Discipline at the workplace in an organization like the employer herein, is the sin qua non for the efficient working of the organization. When an employee breaches such discipline and the employer terminates his services, it is not open to a Labour Court or Industrial Tribunal to take the view that the punishmentawarded is shockingly disproportionate to the charge proved."*
>
> Hon'ble Court has further quoted Jack Chan to highlight the importance of discipline at work place.
>
> *"discipline is a form of civily responsible behavior to help to maintain social order and contribute, preservation, if not advancement of collective interest of the society at large."*

12. Learned counsel for the management has cited **Biecco Lawrie Ltd. & Another** v. **State of West Bengal**, 2009-IV-LLJ 644, **K. Yadiah** v. **Chief Security Commissioner, RPF**, 2007 (112) FLR 130 and **H.R.B.H. Siddique** v. **Brihan Mumbai Electricity Supply**, 2007 (1) CLR 997 wherein it has been held that an act of assault cannot be regarded as a minor breach of discipline and use of abusive language by an employee would not be tolerated in a civilized society. In above case laws Courts also approved rule of shockingly disproportionality.

13. Now coming to the facts of the present case it was found during enquiry that the Assistant Manager, Shri Basak used to instruct the workman concerned to ensure to keep minimum cash balance by remitting excess cash to currency chest. The workman concerned was reminded by Shri Basak on several occasions. On 3rd February, 2010 also the workman concerned was advised to remit excess cash to the currency chest, but he did not obey the instruction. Thus the workman concerned has been found guilty of insubordination for not obeying the instructions issued by the senior, It has also been found during enquiry that on 4th February, 2010

the workman concerned rushed to the cabin of Shri Basak where he abused and slapped him in front of bank customers who had visited the branch for withdrawal of cash. The Enquiry Officer has found the workman concerned guilty of committing indiscipline at work place. Thus it appears that the workman concerned has created an atmosphere of indiscipline and also disrupted smooth functioning of the bank. In an organization where the head of the organization himself was subjected to abusive languages and was physically assaulted by the subordinate staff of the organization, the workman cannot be said to deserve to remain in employment. His presence in the organization is certainly detrimental to the interest of the bank. In these circumstances, the punishment imposed by the management cannot be said to be shockingly disproportionate to the charges of misconduct leveled against the workman in absence of which no interference by this Tribunal is warranted under Section 11-A of the Industrial Disputes Act, 1947.

14. In view of above, the action of the management of Union Bank of India in dismissing the services of Shri Sudhangshu Ranjan Das is found to be legal and justified and the workman concerned is not entitled to any relief. The reference is answered accordingly.

Award is passed as above.

Kolkata,

Dated, the 24th June, 2020

JUSTICE RAVINDRA NATH MISHRA, Presiding Officer

नई दिल्ली, 20 जुलाई, 2020

का.आ. 607.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इलाहाबाद बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकत्ता के पंचाट (संदर्भ सं. 14/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 20.07.2020 को प्राप्त हुआ था।

[सं. एल-12012/113/2011-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 20th July, 2020

S. O. 607.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 14/2012) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the management of Allahabad Bank, and their workmen, received by the Central Government on 20.07.2020.

[No. L-12012/113/2011-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXUR

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 14 of 2012

Parties: Employers in relation to the management of Allahabad Bank

AND

Their workmen

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management : Mr. P. Nandy, Learned Counsel

On behalf of the Workmen : Mr. S. Chakraborty

State: West Bengal Industry: Banking

Dated: 24th June, 2020

AWARD

Bereft of unnecessary details the factual details of the case are that Shri Pradip Kumar Chakraborty was appointed as Peon-cum-Daftary in Allahabad Bank on 1st June, 1979 and he was further promoted to the post of clerical grade in the year 1995 and also to the post of Head Cashier – A in the year 1998. While he was working as Cashier in charge E at Arobinda Sarani Branch at Kolkata on 21st April, 2006 at about 1.30 P.M. a sum of Rs.10,00,000/= was remitted by Arobinda Sarani Branch to Park Street Currency Chest through Smt. Santosh Mehrotra, CCC and Shri Rabindranath Halder, TCF. While counting the notes at currency chest, chest official detected shortage of one packet of one bundle of Rs.100/= amounting to Rs.10,000/=. The matter was immediately brought to the knowledge of the workman concerned over phone by Smt. Santosh Mehrotra. Thereupon without asking anything the workman concerned sent another packet of Rs.100/= amounting to Rupees ten thousand from the cash receipt counter to the chest through Shri Bholanath Dutta, PDC of the branch to replenish the shortfall at the chest. Later on at the time of closing the workman offered a cheque of Rs.10,000/= drawn on his overdraft account to make good the shortage of Rs.10,000/=. On the same day i.e. 21st April, 2006 while closing the vault at the close of business another physical shortage of Rs.28,000/= was detected at the vault itself as no shortage or excess have been found in both receipt and payment on 21st April, 2006. The workman concerned again offered a cheque of Rs.28,000/= from his overdraft account to end the crisis. He also gave an undertaking and promised to pay the total amount of Rs.38,000/= within 15 days as the overdraft account had exceeded the limit. For this act of the workman concerned, he was suspended on 15th June, 2006 and a chargesheet was issued by the appropriate authority on 13th July, 2007. Shri Tapan Bhattacharya, Senior Manager, Bally Branch was appointed as Enquiry Officer. On 19th December, 2007 proceeding of enquiry was recorded. The workman concerned participated in the enquiry. The Enquiry Officer at the conclusion of enquiry submitted his report holding the workman concerned guilty of the charges leveled against him. The Enquiry Officer also proposed penalty of compulsory retirement. A show cause notice was also issued to him to appear before the disciplinary authority, but he failed to attend. In order to provide further opportunity, again notice was issued whereupon the workman concerned submitted his representation to consider and review proposed punishment. Finally the disciplinary authority agreeing with the findings of the Enquiry Officer awarded compulsory retirement from service for the charge of misconduct. Aggrieved by the punishment order passed by the disciplinary authority, the workman concerned preferred an appeal which was also rejected. The punishment of compulsory retirement gave rise to an industrial dispute which has been referred by the Central Government in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 vide Order No.L-12012/113/2011-IR(B-II) dated 26.09.2012 in following language:

> "*Whether the action of the management of Allahabad Bank in imposing punishment of compulsory retirement upon Shri Pradip Kumar Chakraborty vide order dated 30.05.2008 is legal and justified? What relief the concerned workman is entitled to?*"

2. After reference order is received by this Tribunal notices were issued to the respective parties. The workman concerned filed his statement of claim challenging the validity of enquiry. The workman concerned alleged that the chargesheet issued to him was bad in law and *mala fide*. The enquiry was conducted in violation of the basic principles of natural justice. Smt. Santosh Mehrotra, CCC of the branch had signed the receipt at the time of receiving Rs.10,00,000/= of different denomination. The shortage of Rs.10,000/= was detected at Park Street Currency Chest for which Smt. Santosh Mehrotra was only responsible. The Enquiry Officer had ignored the material piece of evidence produced during the course of enquiry and on the basis of imagination and imported facts and circumstances concluded the enquiry. His report is baseless and motivated. The enquiry report is not speaking and reasoned one. The disciplinary authority passed order of punishment as a measure of victimization and unfair labour practice to save CCC, Smt. Santosh Mehrotra as well as Operation Manager, Shri Sukanta Biswas. It is also pleaded that the bank has not incurred any pecuniary loss.

3. The management of Allahabad Bank filed its written statement pleading *inter alia* that the workman concerned was posted at Aurobinda Sarani Branch as Cashier Incharge and had committed certain irregularities which constituted gross misconduct in terms of Clause 5(j) of the memorandum of settlement dated 10th April, 2002. On 21st April, 2006 Rs.10,00,000/= was remitted by Aurobindo Sarani Branch to Park Street Currency Chest through Smt. Santosh Mehrotra along with Shri R.N. Halder. When cash was counted at currency chest, Park Street, shortage of one packet of Rs.100/= amount to Rs.10,000/= was detected which was made good by the workman concerned by sending a cheque of Rs.10,000/= on the same day. Again on the same day another physical shortage of Rs.28,000/= was detected at the Cash Vault which was also made good by the workman concerned by offering a cheque of Rs.28,000/= drawn on his overdraft account. Incidentally the workman concerned exceeded his permissible limit, therefore, he promised to pay Rs.38,000/= within 15 days. The workman concerned was given full opportunity to participate and in fact he participated in the enquiry. The allegation of violation of principles of natural justice is baseless. It is denied that the order of punishment was

passed as a measure of victimization and unfair labour practice to save CCC, Smt. Santosh Mehrotra. And Operation Manager, Shri Sukanta Biswas.

4. In reply to the averments in the written statement of the management of the bank the concerned workman filed his rejoinder reiterating the averments made in the statement of claim.

5. The workman concerned examined himself in evidence. However, no evidence was adduced by the management of the bank. Parties have also filed documentary evidence which shall be discussed at the relevant point of time.

6. As validity of enquiry has been challenged by the workman concerned, this point has been taken up as preliminary issue. Parties have also filed their written notes of argument on validity of enquiry.

7. The ingredients of a valid enquiry have been propounded by the Hon'ble Supreme Court in the case of **Sur Enamel & Stamping Works** v. **their workmen**, reported in 1963-II-LLJ 367. The Hon'ble Supreme Court has held that an enquiry cannot be said to be properly held unless –

(1) The employee proceeded against has been informed clearly the charges leveled against him;

(2) The witnesses are examined ordinarily in the presence of the employee in respect of the charges;

(3) The employee is given fair opportunity to cross-examine witnesses;

(4) The employee is given a fair opportunity to examine witnesses including himself in his defence, if he so wishes and

(5) The Enquiry Officer records his findings with reasons for the same in his report.

8. Though it has been mentioned in the statement of claim of the workman concerned that the principles of natural justice were not followed by the Enquiry Officer in the enquiry proceeding, materials on record show that the concerned workman was given all opportunity as enumerated in above case law. Chargesheet was issued to the workman concerned on 13th July, 2007 delineating the allegations against the workman concerned clearly. Copy of chargesheet is on record which is Ext. M-1. It is not denied that copy of chargesheet was given to workman concerned instead WW-01, Shri Pradip Kumar Chakraborty has admitted in his cross-examination that after receipt of chargesheet he had supplied reply to it. He also admitted that he participated in the enquiry and also adduced his evidence in the enquiry. Proceedings of enquiry is Ext. W-02 which shows that the workmen concerned participated in the proceedings. The management examined MW-01, Shri Partha Sarathi Roy and MW-02, Smt. Santosh Mehrotra in presence of the workman on 26th December, 2007. MW-01 was also cross-examined by the workman. However, MW-02 was not cross-examined by the workman despite giving opportunity to cross-examine her. Thus supply of copy of chargesheet, presence of the workman concerned during enquiry, recording of evidence of the management witnesses in presence of the workman concerned, opportunity to cross-examine witnesses produced by the management and also opportunity to examine his own witnesses including himself in his defence are the facts which are not denied by the workman concerned. The workman concerned had challenged the domestic enquiry mainly on the ground that shortage of Rs.10,000/= was detected when the cash was in transit. Smt. Santosh Mehrotra, CCC had signed documents of receipt of Rs.10,00,000/= of different denomination during remittance from the cash incharge which proves that shortage of Rs.10,000/= was detected at the Park Street Currency Chest for which Smt. Santosh Mehrotra is only responsible. It has also been contended by the workman concerned that the findings of the Enquiry Officer are based on his assumption and presumption. He did not analyzed the evidence adduced by the witnesses. He concluded the enquiry only on the basis of fact that the workmen concerned had made good the deficiency of cash. The fact of receipt of cash by Smt. Santosh Mehrotra was not taken into consideration by the Enquiry Officer which was a vital fact to fix the responsibility.

9. At this juncture, the question of scope of judicial review crops up. It is established principle of law that the provisions of Evidence Act do not apply in strict sense in such cases. In **Naresh Govind Vaze** vs. **Government of Maharashtra & Others**, 2007 (13) SCALE 671 the Hon'ble Apex Court has held that

> *"....It is now well-settled principle of law that the inquiry officer appointed to inquire into the charges leveled against a delinquent officer is neither a court nor the provisions of Evidence Act are applicable."*

10. Similarly, the Hon'ble Division Bench of the Calcutta High Court in **Calcutta State Transport Corporation** v. **Pradip Kumar Banerjee & Others**, 2003 (1) CHN 505 has observed –

"31. .....There is no statutory or other requirement of seeking corroboration of witness's evidence in a disciplinary proceeding. The standard of proof being preponderance of probabilities, uncorroborated evidence of a witness as well as hearsay evidence can be considered."

11. Simultaneously the question of judicial interference also crops up at this juncture. In plethora of cases the Hon'ble Supreme Court has held that jurisdiction to interfere in the findings of Enquiry Officer is that of revisional in nature and no judicial forum has got any power to act as an appellate authority by reappraising evidence on record. It is pertinent to quote the relevant portion of the judgment of the Hon'ble Court in **State of U.P.** v. **Manmohan Nath Singh**, 2009 ASCW 5704 –

"12. The legal position is well settled that the power of judicial review is not directed against the decision but is confined to the decision making process. The Court does not sit in judgment on merits of the decision. It is not open to the High Court to re-appreciate and reappraise the evidence led before the Inquiry Officer and examine the findings recorded by the Inquiry Officer as a court of appeal and reach its own conclusions. In the instant case, the High Court fell into grave error in scanning the evidence as if it was a court of appeal. The approach of the High Court in consideration of the matter suffers from manifest error and, in our thoughtful consideration, the matter requires fresh consideration by the High Court in accordance with law. On this short ground, we sent the matter back to the High Court."

(Emphasis supplied)

12. In **Sanjay Kumar Singh** v. **Union of India**, CDJ 2011 SC 907 it has been held by the Hon'ble Apex Court that

"So far as departmental proceedings are concerned, it is for the departmental authorities to conduct an enquiry in accordance with the prescribed rules. The role of the court in the matter of departmental proceeding is very limited and the court cannot substitute its own view or findings by replacing the finding arrived at by the authority on detail appreciation of evidence on record."

Further highlighting the parameters of courts' power of judicial review, the Hon'ble Apex Court in **Nirmala J. Jhala** v. **State of Gujarat & Another**, CDJ 2013 SC 216 has observed –

"..... .....An order can be set-aside if it is based on extraneous grounds, or when there are no grounds at all for passing it or when the grounds are such that, no one can reasonably arrive at the opinion. The Court does not sit as a Court of Appeal but, it merely reviews the manner in which the decision was made. The Court will not normally exercise its power of judicial review unless it is found that formation of belief by the statutory authority suffers from malafides, dishonest/corrupt practice. In other words, the authority must act in good faith. Neither the question as to whether there was sufficient evidence before the authority can be raised/examined, nor the question of re-appreciating the evidence to examine the correctness of the order under challenge. If there are sufficient grounds for passing an order, then even if one of them is found to be correct, on its basis the order impugned can be passed, there is no occasion for the court to interfere..... ."

13. Thus the scope of interference in disciplinary matters by the Courts or Tribunal is to a limited extent. The Courts are not supposed to perform the duties of appellate authority to scan the evidence, but the role of the Courts or Tribunal is limited to the extent that the Courts is to see whether the domestic enquiry was conducted in a fair manner and due opportunity was given to the delinquent official. In **Union of India** vs. **P. Gunasekharan**, (2015) 2 SCC 610 the Hon'ble Apex Court has delineated the grounds when the Court can exercise its powers to interfere in domestic enquiry. Those points may be reproduced as below which the court should take into consideration whether -

(a) the enquiry is held by a competent authority;

(b) the enquiry is held according to the procedure prescribed in that behalf;

(c) there is violation of the principles of natural justice in conducting the proceedings;

(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding; and

(i) the finding of fact is based on evidence.

14. Thus it is established that where there is arbitrariness or perversity the findings of the enquiry cannot be sustained. The test of perversity is that the findings may not be supported by legal evidence. In **Central Bank of India Ltd**. v. **Prakash Chandra Jain**, 1969-II-LLJ 377the Hon'ble Supreme Court has observed that when the findings are such which no reasonable person could have arrived at on the basis of materials before him, then the findings are perverse.

15. In the present case the Enquiry Officer has concluded the guilt of the workman concerned on the ground of issuance of cheques for Rs.10,000/= and Rs.28,000/= to replenish the shortage of cash without raising any objection. According to the Enquiry Officer onus was taken up by the workman without asking for fixing of responsibility. The allegations against the workman concerned as revealed from the chargesheet, Ext. M-01 are that on 21st April, 2006 a sum of Rs.10,00,000/= was remitted by Aurobindo Sarani Branch to Park Street Currency Chest through Smt. Santosh Mehrotra, CCC of the branch. It is also revealed in the chargesheet that while counting notes at the currency chest the chest official detected shortage of one packet in one bundle of Rs.100/= amounting to Rs.10,000/=. Then the matter was immediately brought to the knowledge of the workman concerned over phone by Smt. Santosh Mehrotra. Thus it is evident that shortage of Rs.10,000/= occurred while the cash was in transit. Smt. Santosh Mehrotra who has been examined in the enquiry proceeding as MW-02 has stated that she had taken cash of Rs.10,00,000/= to the currency chest. MW-01, Shri Partha Sarathi Roy has stated in the enquiry that the currency chest is situated at some distance hence some times might have taken. MW-01 has also stated in enquiry that he has conducted interview of the workman concerned which was witnessed by shri Indranil Mitra. The interview of the workman concerned is on record which is Ext. W-08. In answer to question number 11 the workman concerned has stated that he himself has counted the cash and handed over to Smt. Santosh Mehrotra, CCC who took the cash to the chest. He has also stated that he also counted the cash. Photo copy of voucher, Ext. W-10 also shows that after taking charge of cash Smt. Santosh Mehrotra had endorsed receipt of Rs.10,00,000/= after mentioning the currency of different denomination. It is also signed by Smt. Santosh Mehrotra. Enquiry report, Ext. W-07 also mentions the fact of custody of cash by MW-02, Smt. Santosh Mehrotra who had acknowledged receipt of cash as payee on the reverse of cash payment of voucher dated 21st April, 2006 of Rs.10,00,000/= where denomination of notes is clearly written. Thus, it is clear that the legal custody of cash was with Smt. Santosh Mehrotra when the shortage of Rs.10,000/= was detected. When the cash was handed over to Smt. Santosh Mehrotra by the workman concerned who had counted cash before giving custody of cash, thereafter Smt. Santosh Mehrotra also counted cash and gave receipt of the same, how the workman concerned can be held responsible for shortage of cash which was detected at currency chest at Park Street.

16. The Enquiry Officer appears to have been swayed away by the fact that the workman concerned did not raise any question of fixing responsibility of shortage of money and straightway made good the shortage of cash. It is surprising that the Enquiry Officer did not go through the interview of the workman concerned recorded by MW-01 wherein the workman has stated in answer to Question No. 18 that as Manager, Operation insisted him to make good the shortage, he issued cheque of Rs.10,000/=. However, he has stated that he had raised objection at that time. Thus the finding of Enquiry Officer that the workman concerned did not raise any question of fixing responsibility and issued cheque of Rs.10,000/= which amounts to his confession is unfounded. The Enquiry officer totally ignored the receipt given by Smt. Santosh Mehrotra, CCC of the branch on the reverse of the cash payment voucher dated 21st April, 2006 which was a vital fact to decide the guilt of the workman concerned. In order to base a guilt of the workman concerned the confession must be clear and voluntary which is not in the present case.

17. In these circumstances, the apprehension of the workman concerned that the chargesheet was issued to him with *mala fide* intention and as a measure of victimization and unfair labour practice just to save CCC, Smt. Santosh Mehrotra is not unfounded. The conclusion arrived at by the Enquiry Officer is arbitrary and capricious that no reasonable person could ever have arrived at. His findings are not supported by legal evidence. The Enquiry Officer totally ignored the material piece of evidence and was so swayed away by extraneous material which was not legally admissible. Hence, I come to the conclusion that the findings of the Enquiry Officer are perverse and the enquiry, therefore, is not sustainable in the eye of law. The enquiry, therefore, is vitiated and held to be not valid.

18. After the domestic enquiry is held to be illegal and improper the question crops up whether the employer is entitled to get an opportunity to lead evidence in order to substantiate the charges against the workman concerned? If yes, under what circumstances?

19. In **Shankar Chakraborty** v. **Britania Biscuit Co. Ltd.**, AIR 1979 SC 1652 : 1979-II-LLJ 194 SC the Hon'ble Apex Court has held –

"34. Having given our most anxious consideration to the question raised before us, and minutely, examining the decision in Cooper Engineering Ltd. case (supra) to ascertain the ratio as well as the question raised both on precedent and on principle, it is undeniable that there is no duty cast on the Industrial Tribunal or the Labour Court while adjudicating upon a penal termination of service of a workman either under S. 10 or under S. 33 to call upon the employer to adduce additional evidence to substantiate the charge of misconduct by giving some specific opportunity after decision on the preliminary issue whether the domestic enquiry was at all held, or if held, was defective, in favour of the workman. Cooper Engineering Ltd. case (supra) merely specifies the stage at which such opportunity is to be given, if sought. It is both the right and obligation of the employer, if it so chooses, to additional evidence to substantiate the charges of misconduct. It is for the employer to avail of such opportunity by specific pleading or by a specific request. If such an opportunity is sought in the course of the proceeding the Industrial Tribunal or the Labour Court, as the case may be, should grant the opportunity to lead additional evidence to substantiate the charges. But if no such opportunity is sought nor there is any pleading to that effect no duty is cast on the Labour Court or the Industrial Tribunal suo motu to call upon the employer to adduce additional evidence to substantiate the charges."

(Emphasis supplied)

20. Referring the principles laid down in Shankar Chakraborty case (supra) the Hon'ble Apex Court in **M.L. Singh** v. **Punjab National Bank**, 2018 LAB I.C. 4321 observed

"44. This Court while answering the aforesaid question held that it is for the employer to ask for such opportunity to lead evidence to prove the charge of misconduct and once such prayer is made in any form, I.e., orally or by application or in pleading, the same cannot be denied to the employer. It has to be granted to enable him to prove the misconduct. This Court further held that no duty is cast upon the Court to offer such opportunity to the employer suo motu, if he does not ask for it. In otherwords, he has to ask for from the Court by any of the three modes mentioned above."

21. In the present case there is no prayer by the employer in any form, either oral or by any application or in the pleading asking for opportunity to lead evidence to prove the charge of misconduct. Hence no question of giving opportunity to the employer to lead evidence arises. Consequently compulsory retirement of the workman concerned on the basis of invalid, illegal and improper enquiry cannot be sustained and liable to be quashed.

22. Now, after the punishment of compulsory retirement is found not sustainable, the question follows whether reinstatement of the workman is automatic? This question has been considered by the Hon'ble Apex Court in **Jagbir Singh** v. **Hariyana State Agriculture Board & Another**, 2009-IV-LLJ 336 that reinstatement is not automatic. Relevant portion of the judgment may be quoted below –

"7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice."

23. In the present case the workman, Shri Pradip Kumar Chakraborty was appointed in the bank approximately 41 years before, i.e., 1979. Thus he must have reached the age of superannuation or must be on the verge of superannuation. In both cases, his reinstatement is not proper. Therefore, I am of the view that instead of granting him relief of reinstatement, it would be more appropriate to grant him lump sum compensation.

24. In view of above, the workman concerned, Shri Chakraborty is entitled to lump sum compensation of Rs.3,00,000/= (Rupees three lac only)

25. Award is passed accordingly.

Kolkata,

Dated, the 24th June, 2020

JUSTICE RAVINDRA NATH MISHRA, Presiding Officer

नई दिल्ली, 20 जुलाई, 2020

का.आ. 608.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ सं. 34/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 20.07.2020 को प्राप्त हुआ था।

[सं. एल-12012/31/2012-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 20th July, 2020

S. O. 608.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 34/2012) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Canara Bank, and their workmen, received by the Central Government on 20.07.2020.

[No. L-12012/31/2012-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 01ST JULY, 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 34/2012

I Party	**II Party**
Sh. C.H. Nanjundappa, S/o Hanumantappa, R/at Kapachinnepalli Village, Nallappareddypalli Post, Bagepally Taluk, Chikkabalapur District - 561207.	The Dy. General Manager, Canara Bank, Circle Office (Rural), 3rd Floor, No. 86, Spencer's Towers, M.G. Road, Bangalore – 560001.

Appearance

Advocate for I Party : Mr. Muralidhara

Advocate for II Party : Mr. Udaya Shankar Rai

AWARD

The Central Government vide Order No. L-12012/31/2012-IR(B-II) dated 30.08.2012 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the action of the management of Canara Bank in imposing the punishment of compulsory retirement w.e.f. 27.07.2010 upon Sh. C. H. Nanjundappa, Ex-Sub-Staff, is legal and justified? What relief the workman concerned is entitled to?"**

1. The 1st Party workman herein joined the 2nd Party as a Daily Wager and was confirmed in service of the Bank as a Sub-Staff. While working as Daftary at Bagepalli Branch, he was issued Charge Sheet dated 22.01.2010 followed by Departmental Enquiry; the Enquiry Officer found him guilty of all the charges; the Disciplinary Authority after getting his response to the enquiry findings and on affording him personal hearing, imposed the punishment of 'dismissal from service without notice'. In appeal the Appellate Authority modified the punishment to Compulsory Retirement.

The workman has his grievance against the procedure employed by the Enquiry Officer during the enquiry, biased attitude of the Enquiry Officer - improper assessment of the evidence - perversity of the findings - non-application of independent mind by the Disciplinary Authority so also the Appellate Authority to the facts

and circumstance of the case. He alleges that, in the case of Prashanth Kumar / Sub-staff a case similar to his, the 2nd Party Management had not inflicted major punishment. The workman was singled out while imposing the punishment; the punishment is excessive and disproportionate to the gravity of the misconduct alleged against him; he has no other means of livelihood.

2. The 2nd Party contested the claim and while countering all his allegations seeks to justify the action taken against him.

3. On the rival pleading touching the fairness and correctness of the Domestic Enquiry, a Preliminary Issue was raised, tried and adjudicated holding that there was no violation of Principles of Natural justice hindering the defence of the 1st Party. Thus, the issue was answered affirmatively endorsing the fairness of the Domestic Enquiry.

4. The 1st Party has adduced evidence about his unemployment and has stated that 2nd Party has not disbursed his Provident Fund and Gratuity.

5. Both Learned Advocates have submitted arguments. The salient points of arguments of the 1st Party is submitted in writing also.

6. The allegation against the workman vide Charge Sheet dated 22.01.2010 was,

Many cheques discounted by Chikkaballapura Branch of 2nd Party favouring LIC of India and sent for collection to Bagepalli Branch were outstanding since long – the instruments so received at the Branch were reported missing and not debited to the respective accounts of the drawers / not sent for collection to the concerned local banks – he was in the habit of taking hand loans from Sh. Mudduraju, LIC Agent / holder of SB Account 10597 at the Branch – without providing sufficient balance in his account, the 1st Party issued blank cheques to Sh. Mudduraju - those cheques were utilised by Sh. Mudduraju for making payment of LIC premium in the name of third parties by discounting the cheques at Chikkaballapura Branch and incorporating the payees name as LIC of India – when the said cheques were sent for collection to Bagepalli Branch, the 1st Party because of his nexus with Sh. Mudduraju withheld 27 cheques which were received from Chikkaballapura Branch for collection between 04.06.2007 and 10.02.2009. Out of the 27 cheques, one cheque pertains to SB account of his wife Smt. Jayamma where sufficient balance was not available in her account to honour the cheque - during the course of investigation, he admitted the above facts in writing and handed over 21 cheques held in his possession to the Manager as per the list enclosed and 6 more cheques are yet to be surrendered.

Vide his letter dated 16.02.2010, CSE denied the charges.

7. During the enquiry, the CSE had the benefit of assistance from his Defence Representative. Five witnesses were examined for the prosecution and the CSE could not adduce rebuttal evidence within the time granted by the Enquiry Officer.

The first witness was the Officer, HRM Section who identified the two letters, one addressed to the CSE calling for his explanation regarding the fraud perpetuated with regard to the cheques received and the reply submitted by the CSE to the above said letter.

The second witness was the Investigating Officer, he had produced and interim report dated 06.04.2009 and the final report dated 13.04.2009. In fact, he was the second Investigating Officer, the first Investigating Officer. One Sh. Guru Prasad had recovered 21 out of 27 cheques in Bagepalli Branch and said to have recorded the statement of the CSE. Those cheques were identified by MW-2, he also read the xerox copy of a statement which was recorded by Sh. Guru Prasad; this document was taken on record as Mex-10. Vide this letter, Sh. Mudduraju / LIC Agent had stated to the effect that he paid Rs. 5,50,000/- to the CSE as detailed in the overleaf – he is yet to pay amount of these cheques – the amount is paid to CSE for payment towards cheques under CDB. He also deposed in respect of another document which was marked as Mex-8, this is also a photostat copy of the statement given in writing by the CSE to the Manager of the Bank wherein he apologised for withholding the cheques and sought to pardon him. Instead of disputing Mex-8 and Mex-10, the defence went on to suggest the witness that, had if, Chikkaballapura Branch taken care to adhere to the systems and procedure this situation could have been avoided.

The third witness was the Official working at the Branch at the relevant time. He is a witness to the statement given by CSE as per Mex-8.

The fourth witness was the Present Manager of the Branch. He identified the internal communications with the Head Office, the fraud Report submitted to the Head Office and the FIR registered by the jurisdiction Police.

The fifth witness was the Official who was working at the Branch at the relevant point of time. She identified the statement (Mex-11) given by her to the Investigating Officer about missing of the cheques.

8. The Enquiry Officer in the body of his Report refers to the role of Sh. Mudduraju / LIC Agent, who was issuing cheques favouring LIC drawn on different Branch without maintaining funds in his Account, for discounting and crediting to the account of LIC with Chikkaballapura Branch of the 2nd Party – those cheques would be sent to Bagepalli Branch from Chikkaballapura Branch for collection, said Sh. Mudduraju in his statement dated 08.04.2009 which was marked as Mex-6 (given before the previous Investigating Officer Sh. Guru Prasad) had revealed that he has given Rs. 5.50 lakhs to the CSE for depositing in his account to honour the cheques issued by him – out of the above Rs. 1.70 Lakhs is credited to his account by CSE for passing three cheques and the balance amount was yet to be paid by CSE – the Enquiry Officer also relied on the letter / Mex-8 of CSE wherein, he had admitted having borrowed Rs. 1.50 lakhs from Sh. Mudduraju – the Enquiry Officer also took note that CSE vide his letter / Mex-44 had requested the Branch to transfer Rs. 26,917/- deposited by him in suspense account to the Account of Sh. Mudduraju and further he surrendered 21 cheques held by him and promised to surrender remaining six cheques – he had also admitted withholding of those cheques in his statement / Mex-8.

That steered the Enquiry Officer to record the finding of guilt against the CSE.

9. Sh. MD for the 1st Party emphasises on the fact that, Sh. Mudduraju / LIC Agent whose statement was entirely relied and acted upon to hold the CSE guilty of the charges was not examined; that apart only the Xerox copy of the statement was marked in evidence. Added to that, the previous Investigating Officer to whom the CSE is said to have surrendered the 21 cheques is not examined. Not providing opportunity to the CSE to cross examine Sh. Mudduraju and placing reliance on the statement given by said Sh. Mudduraju before the Investigating Officer / MW-2 affects the Enquiry Report as perverse. The Investigating Officer has failed to verify whether the CSE who is a Sub-Staff was entrusted with the work of receiving out station cheques at Bagepalli Branch. This was a crucial point to be verified before holding him responsible for detention of out station cheques. The Investigating Officer has also pointed towards the Branch Manager and Smt. Shantha Devi / Officers for their lapses. For the failure of the system, the 1st Party is visited with exemplary punishment of Compulsory Retirement which is disproportionate to the alleged act of misconduct – he is without employment and may be reinstated with appropriate reliefs towards back wages and continuity of service.

10. Per contra, Sh. UR for the 2nd Party would submit that, the 1st Party cannot take the benefit of non-examination of Sh. Mudduraju having admitted before the Investigating Officer that he had withheld the cheques. In the original Charge Sheet issued to him, the allegation was that the CSE was in the habit of taking hand loans from one Sh. Mudduraju / LIC Agent and holder of SB Account No. 10597 at the Branch and in lieu of the same used to issue blank cheques to him without providing sufficient balance in his account – those blank cheques were utilised by Sh. Mudduraju for the purpose of making payment of LIC premium in the name of third parties by discounting the cheques at Chikkaballapura Branch by incorporating the payees name as LIC of India. But the above allegation was deleted and limited to the extent

> "*a detailed investigation conducted in the matter has revealed that you were in the habit of withholding such discounted cheques received from Chikkaballapura Branch with an intention to favour Sh. Mudduraju, LIC Agent from whom you have taken hand loans, which resulted in committing a fraud in the Bank.*"

Learned counsel would submit that in view of the amendment to the Charge Sheet, it was not at all required to examine Sh. Mudduraju as a witness. In the letter marked during the enquiry as Mex-8, the CSE addressed a letter dated 03.04.2009 to the Investigating Officer / MW-2. In this letter, he has unequivocally admitted holding 27 subject cheques of total value Rs. 13,15,000/- upto 10.02.2009 and he surrendered 21 cheques to the Investigating Officer /Sh. Guru Prasad and undertook to produce remaining six cheques etc. He sought to condone his mistake and undertook not to repeat such acts henceforth.

11. Learned counsel further takes me to Ex M-14 which is a reply given by the 1st Party to the Disciplinary Authority in response to the proposed punishment. In this letter among other thing he has stated that,

> *"…. Whenever the concerned official instructed me to keep pending the collected instrument due to pressure of work, I have kept aside such instruments…… I have no contact with Sh. Muddaraja, the LIC Agent except for one cheque of my wife which as again surfaced due to malafide act on the part of Sh. Muddaraja…."*

The Appellate Authority in it's Order dated 23.02.2011 has recorded the submissions made by him during the personal hearing as below :

"*during the personal hearing the Appellant has pleaded that he had not direct relation withSh. Mudduraju, the LIC Agent and that he was detaining the cheques out of ignorance. Without knowing the intricacies of his act and also he never had any intention to defraud the Bank. He maintained that the cheques were in his possession as a measure of safety and his acts were within the knowledge of his Superiors.*"

Learned Counsel places his reliance on the Judgment of the Division Bench of the Hon'ble High Court of Karnataka in W.A 4297/2009 (S-DIS) DD 24.08.2010, wherein the Hon'ble High Court allowed the Appeal preferred by the Bank by considering the admission given by the Employee, firstly, before the Preliminary Enquiry Officer then before the Enquiring Officer and thirdly in the statement of objection submitted by him.

In the light of the above, it is pertinent to note that in the Charge Sheet itself it was alleged

"*during the course of investigation you have admitted the above facts in writing and handed over 21 cheques held in your possession as per the list enclosed (Sl. No. 1-21) with six more cheques to be surrendered.*"

The details of the 23 cheques were annexed to the Charge Sheet.

12. MW-2/Investigating Officer among other things had produced the interim Investigating Report prepared by him pertaining to cheques discounted to LIC of India account, his final Investigating Reports and the statement of witnesses, the details of the cheques in the custody of CSE and another co-employee Sh. K.N. Prashanth Kumar, the statement of Sh. Mudduraju addressed to him witnessed by the Branch Manager Sh. Nandeeshwara / MW-4, statement of the CSE witnessed by Sh. Narayanappa / MW-3 / Officer of the Branch and the details of pending cheques prepared by Sh. Mudduraja.

During the cross examination, the defence never disputed the authenticity of the details of the pending cheque list / Mex-10 prepared by Sh. Mudduraju. Instead the suggestion was, had Canara Bank, Chikkaballapura Branch would have taken care to adhere systems and procedures this situation could have been avoided. The witness stated that the original of Mex-10 is with Sh. Mudduraju.

During the cross examination of MW-3 and MW-4 there was no suggestion that Mex-8 is not authored by CSE.

13. As such the allegation in the Charge Sheet though refers to the transactions between the CSE and Sh. Mudduraju, the core of the allegation is,

"By withholding cheques received by the Branch, you have caused willful damage to the property of the Bank and have thus committed misconduct within the meaning of Chapter XI Regulation 3 Clause (j) of Canara Bank Service Code – and committed misconduct within the meaning of Chapter XI Regulation 3 Clause (m) of Canara Bank Service Code."

14. The defence that placing reliance merely on the statement of Sh. Mudduraju vitiates the Enquiry Report in it's entirety though cannot be out rightly rejected facts remain that, the workman at no point of time disputed holding the cheques sent from Chikkaballapura Branch to the Bagepalli Branch for a considerable period. The personal transaction between the CSE and Sh. Mudduraju though not established by adducing direct evidence, surrender of 21 cheques (out of the missing 27 cheques) by the workman is established by the oral evidence of MW-2, MW-3 and MW-4.

Though, the previous Investigating Officer before whom the cheques were surrendered is not examined as witness, what overweighs is –

that, the 2nd Party before framing the Charge Sheet issued a memo to him and referred to the fact that he admitted the allegations of holding 27 cheques in writing and handed over 21 cheques in his possession to the Manager as per the list enclosed therein and called upon his say in the matter.

The notice was marked during the Enquiry as Mex-1; the CSE in his reply / Mex-2 dated 10.06.2009 narrated his personal difficulties for raising loan of Rs. 1.50 lakhs from Sh. Mudduraju – and gave cheques to Sh. Mudduraju towards security – Sh. Mudduraju approached his wife directly regarding subscription to Sri Ram Chits and obtained cheque from her - he might have used the said cheques to remit LIC premium.

Following are the relevant lines from Mex-2,

As already stated in my statement I had handed over the pending OSC cheques to the custody of the Investigating Officer. I have also prevailed uponSh. Mudduraju to remit the outstanding cheque amount and succeeded in getting the major amount recovered from him. He has promised to remit the remaining amount and I will see to it that Bank will not suffer any loss in this account.

Sir, due to ignorance about the implications of the transactions of the OSC cheques I have kept aside some cheques... "

15. The Investigating Officer in his interim Report has brought on record that, the CSE confessed the act of withholding the discounted cheques without being debited to the respective accounts. CSE in collusion with Sh. Mudduraju defrauded the Bank by withholding the discounted cheques to favour Sh. Mudduraju in obligation to the loan taken by him. There was no balance in the accounts to honour the cheques.

16. As against the prosecution case, there was no rebuttal evidence. In his written brief, the CSE did not deny about surrendering the withheld cheques but went on technicalities that he being a sub-staff missing of cheques do not come under the jurisdiction of the sub-staff – he has acted at the instruction of the Clerk, Officers and his Superiors – he had kept aside the pending cheques as per the instruction of the Superiors - taken out and given back the pending cheques as and when demanded by his Higher Authorities – he had not issued cheques to Sh. Mudduraju, LIC Agent – pending cheques were in his custody as a measure of safety.

17. Of course, there is no thread bear appreciation of evidence by the Enquiry Officer for reaching his finding. The Enquiry Authority focused on

(i) A letter marked during Enquiry as Mex-44 whereby he requested the Branch to transfer Rs. 26,917/- in the suspense account to the Account of Sh. Mudduraju.

(ii) Surrender of 21 cheques by him during the investigation.

(iii) The Police Authorities gave vide publicity to the fraud committed by him and others thus, tarnishing the image of the Bank.

(iv) In his letter / Mex-8 given to the Investigating Officer had admitted about keeping the 27 cheques amounting to Rs. 31.15 lakhs with him.

All the above circumstances relied by the Enquiry Officer cannot be said extraneous to the subject matter of Enquiry, the workman failed to build up a specific defence. Of course, it is always the onus of the prosecution to prove the allegations. The onus shift to the CSE, thereafter to address the incriminating circumstance appearing against him in the case of the Management. The parameter for appreciation of evidences applicable to Criminal adjudication has no role in a Departmental Enquiry. The workman having admitted at the initial stage itself about suppressing the cheques which are the properties of the Bank was not able to destroy the presumption arising out of the prosecution case. The irregularities in handling the cheques at the supervisory level cannot be encashed by a sub-staff to wriggle out of charges.

18. Even during the personal hearing before the Disciplinary Authority, he had stated to the effect that *"... when the Manager asked to search for cheques, I searched some and handed over to the Manager... "* such contention was raised for the first time before the Disciplinary Authority – the Disciplinary Authority vide Punishment Order dated 27.07.2010 imposed the punishment of 'Dismissal without notice' - after independent consideration of the material made available before the Enquiry Officer – the contention raised by the CSE during the personal hearing is also taken note of on the submissions made by him that the Disciplinary Authority inferred that the statement made by him and the contents of his letter speaks of his inconsistent approach – not supported by evidence. Thus, the proposed punishment was confirmed.

19. The Appellate Authority gave personal hearing before considering the Appeal; addressed all the defence contentions and did not see any new ground warranting modification of the punishment; still modified the punishment from 'Dismissal without notice' to 'Compulsory Retirement'.

20. I am convinced that, whatever evidence was placed during the Enquiry was sufficient to make out the case that by withholding the cheques, he has caused wilful damage to the property of the Bank; naturally, said act was prejudicial to the interest of the Bank. The punishment of 'Compulsory Retirement' balances the gravity of the misconduct proved and the 2nd Party in imposing the punishment of 'Dismissal without notice' w.e.f 27.07.2010 on the 1st Party workman is not illegal.

AWARD

The reference is rejected.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 01st July, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 23 जुलाई, 2020

का.आ. 609.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नेशनल टेस्ट हाउस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण –सह-श्रम न्यायालय, कोलकता के पंचाट (संदर्भ संख्या 14/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.07.2020 को प्राप्त हुआ था।

[सं. एल-42012/224/2003-आईआर (सीएम-2)]
राजेन्द्र सिंह, डेस्क अधिकारी/अनुभाग अधिकारी

New Delhi, the 23rd July, 2020

S. O. 609.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 14/2004) of the Cent.Govt.Indus.Tribunal-cum-Labour Kolkata, as shown in the Annexure, in the industrial dispute between the Management of National Test House and their workmen, received by the Central Government on 17.07.2020.

[No. L-42012/224/2003-IR (CM-II)]

RAJENDER SINGH, Desk Officer/Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 14 of 2004

Parties: Employers in relation to the management of National Test House

AND

Their workmen

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management	:	Mr. P.K. Chatterjee, learned counsel
On behalf of the Workmen	:	Mr. T.K. Pyne, workman in person
State: West Bengal.		Industry: National Test House.

Dated: 24th June, 2020

AWARD

By Order No.L-42012/224/2003-IR(CM-II) dated 24.03.2004 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred an industrial dispute to this Tribunal for adjudication, schedule of which may be quoted as below:

> *"Whether Mr. Tapan Kumar Pyne, Ex-Armed Security Guard is entitled for arrears of wages and other dues to a tune of Rs.122617/= from his immediate employer Security & Investigation Bureau or from the Principal employer National Test House and the workman is entitled for regularization of his services in National Test House, Kolkata w.e.f. 1.4.2003? If yes, to what relief he is entitled?"*

2. The workman in his statement of claim has pleaded that he was employed on 8th July, 2002 on monthly salary of Rs.8903/= as an Armed Guard by M/s. Security & Investigation Bureau, but his services were terminated verbally without assigning any reason with effect from 31st March, 2003. He was neither charge-sheeted, nor any other misconduct was shown on his part. Having regard to the nature of work, the work of the workman was of perennial in nature was ordinarily performed by a regular workman in the establishment of National Test House. Apart from the concerned workman, there are 30 contract labourers in the establishment employed in the same category. The establishment of National Test House is having vacancy for the working heads because some has retired and new recruits have to be taken in. It is further pleaded that contract is not a genuine contract. The workman concerned himself can raise this dispute since in raising such dispute the workman would be proceeding on the basis that he is employee of principal employer, the dispute squarely fall

within the dispute under Section 2(k) of the Industrial Disputes Act, 1947, hereinafter referred as the Act of 1947 for convenience. The workman had been rendering services during his employment, but he was not paid salary and other allowances like other employees of the same category of the establishment. The contract of M/s. Security & Investigation Bureau has come to end. The workman concerned is not being allowed to do his duty. Therefore, as per provisions of the Contract Labour (Abolition & Regulation) Act, 1970 if the contractor fails to pay dues due to any reason, the principal employer is liable for the same.

3. The management of National Test House has filed its written statement denying the allegations of the workman concerned and has pleaded *inter alia* that the reference is not maintainable since the alleged dispute is an individual dispute and cannot assume the character of an industrial dispute. The reference is also not maintainable since the dispute raised is beyond the scope and ambit of Second and Third Schedule of the Act of 1947. The National Test House is a subordinate office of Government of India and does not come within the definition of industry. It is also pleaded that the workman concerned, Shri Tapan Kumar Pyne was engaged by the employer, M/s. Security & Investigation Bureau for providing services of Armed Guard at the premises of the National Test House, Alipore, Kolkata who only paid service charges to the security agency for lending their services to National Test House the principal employer. The workman concerned is wholly and solely employee of the security agency and the Government of India has no liability whatsoever in respect of the service matters of deployed personnel. No appointment letter was issued to the workman concerned by the department. The service of the workman concerned was given to the principal employer on loan basis on their own risk and responsibility. The principal employer only used to send requisition to the immediate employer for providing number of persons and their immediate employer sent their persons for specific period from 1st April, 2002 to 30th September, 2002. National Test House the principal employer has no direct relationship with the workman concerned. There was no employer – employee relationship. The services of the workman concerned was discontinued with effect from 1st April, 2003 as per terms and conditions of contract between the National Test House and the security agency which does not come within the definition of Section 2(oo) of the Act of 1947. Section 25F, 25G and 25H of the Act of 1947 are not applicable. Therefore, the workman concerned is not entitled to raise any industrial dispute.

4. In response to the written statement of National Test House the workman concerned has filed his rejoinder reiterating his claim as set forth in the statement of claim.

5. No written statement has been filed on behalf of M/s. Security & Investigation Bureau.

6. I have heard the concerned workman and the learned counsel for the National Test House.

7. The first and foremost question which goes to the root of the case is maintainability of this reference. The learned counsel for the National Test House has submitted that the dispute raised by the concerned workman is an individual dispute which does not come within the definition of industrial dispute defined under Section 2(k) of the Act of 1947.

8. It is well settled that a dispute between an individual workman and his employer cannot be an industrial dispute as defined under Section 2(k) of the Act of 1947 unless it is taken up by a union of workmen or by a considerable number of workmen. In **Central Provinces Transport Services Ltd.** v. **Raghunath Gopal**, 1957-I-LLJ 27 (SC) it has been held that the preponderance of judicial opinion was clearly in favour of the view that a dispute between an employer and a single employee cannot per se be an industrial dispute, but it may become one, if it is taken up by a union or by a number of workmen. Admittedly the present dispute raised by the workman concerned is not sponsored by any union or by considerable number of workmen. From the schedule of reference it is amply clear that the dispute referred is with regard to entitlement of workman concerned for arrear of wages and other dues and also for regularization of his services in National Test House, Kolkata with effect from 1st April, 2003. Thus, no dispute has been referred to this Tribunal involving termination of services of the workman concerned. The dispute of payment of arrears of wages and regularization are disputes which need to be sponsored by a union or considerable number of workmen so that it can be converted into industrial dispute.

9. The case of National Test House as pleaded in the written statement is that the concerned workman was employed by M/s. Security & Investigation Bureau, Kolkata who had been given contract for providing services of Armed Guard at the premises of National Test House. It has been pleaded by the management of National Test House that the principal employer used to send requisition to the immediate employer for providing

number of persons whereupon the immediate employer used to send persons for specific period from 1st April, 2002 to 30th September, 2002. It is also submitted that there was no employer – employee relationship between National Test House and the workman concerned. The workman concerned has admitted that he was employed by M/s. Security & Investigation Bureau, but he was deputed to work at the premises of National Test House as an Armed Guard. He, however, has stated that the contract between the principal employer and the immediate employer was a sham contract. Therefore, he shall be deemed to be an employee of National Test House who is responsible for payment of his arrears of wages upon failure of the immediate employer.

10. Now coming to the relationship of employer and employee between National Test House and the workman concerned, the Hon'ble Supreme Court in **Balwant Rai Saluja & Anr**. v. **Air India & Ors.**, 2014 (9) SCALE 567 = CDJ 2014 SC 694 while determining the relationship of employer and employee has held as follows:

> *"61. Thus, it can be concluded that the relevant factors to be taken into consideration to establish an employer – employee relationship would include, inter alia, (1) who appoints the workers; (ii) who pays the salary/remuneration; (iii) who has the authority to dismiss; (iv) who can take disciplinary action; (v) whether there is continuity of service; and (vi) extent of control and supervision, i.e. whether there exists complete control and supervision. As regards, extent of control and supervision we have already taken note of the observations in Bengal Nagpur Cotton Mills case (supra), the International Airport Authority of India case (supra) and the NALCO case (supra)."*

11. The aspect of relationship of employer and employee is a pure question of fact and initial burden is on the person who claims existence of employer and employee relationship. In **Bank of Baroda** v. **Ghemarbhai Harjibhai Rabary**, 2005 (3) SCALE 353 Hon'ble the Supreme Court has observed –

> *"8. While there is no doubt in law that the burden of proof that a claimant was in the employment of a management, primarily lies on the workman who claims to be a workman. The decree of such proof so required vary from case to case."*

12. Now coming to the facts of the present case, it is not disputed that the services of workman concerned was provided by M/s. Security & Investigation Bureau in persuance of contract entered into between M/s. Security & Investigation Bureau and National Test House. Copy of contract has been filed on record. The terms and conditions incorporated in the contract show that it has been agreed that the workers employed by the contractor for the assigned work shall be under the sole and whole control of the management of the contractor and for all purposes they will be employees of the contractor. Condition No. 10 also discloses that National Test House would be free from all encumbrances arising out of Armed Guard employed by the contractor, agency who shall ensure the safety of their workers during the course of work. Thus, so far as payment of salary and control over the personnel deployed by the contractor are concerned, they remained with the contractor. Therefore, as per above discussion it is clear that there was no employer – employee relationship between National Test House and the workman concerned. Hence, it is only the contractor who can be made responsible for payment of arrears of wages.

13. The workman concerned has submitted that the contract between National Test House and M/s. Security & Investigation Bureau was a mere sham contract and the management in order to camouflage the real picture has tried to show a sham contract only to deprive the concerned workman from his legitimate claim of absorption in service. Though the contractor and the National Test House had no valid license/registration to supply contract labour (if it can be termed) under the Contract Labour (Abolition & Regulation) Act, 1970, in that case also the same does not cloth the contract labour with legal right to claim that they are direct employees under the principal employer. The judgment of the Hon'ble Calcutta High Court in **M/s. Iron & Steel Company Limited** v. **State of West Bengal**, CDJ 2011 Cal 446 may be quoted below:

> *"20. ……. Non-obtention of licence without anything more, would not clothe the added respondents with any legal right to claim that they are direct employees of the company and hence entitled to continue in service despite the contract with Kaycee not being renewed."*

Thus, in view of above judgment of the Hon'ble Calcutta High Court the workman concerned cannot claim himself to be employee of National Test House.

14. Apart from this, the contract available on record shows that it was in existence between National Test House and M/s. Security & Investigation Bureau since 1st April, 2002 till 30th September, 2002. Thus the

contract for providing services of Armed Guards had come to an end on 30th September, 2002. Therefore, the service of the workman concerned also came to an end with the end of contract between the principal employer and immediate employer. Though the issue of termination of the concerned workman was not referred to this Tribunal and any adjudication on the point would be beyond the scope of reference, but as the workman has raised this issue, it would be suffice to say that the termination of the workman is not covered by the provisions of Section 2(oo) of the Act of 1947 where termination of service of workman as a result of non-renewal of contract of employment has been given as an exemption to the definition of retrenchment.

15. Therefore, in view of above, I come to the conclusion that the workman concerned is not entitled for any relief whatsoever and the issues referred are answered in negative.

16. Award is passed accordingly.

The 24th June, 2020, Kolkata,

JUSTICE RAVINDRA NATH MISHRA, Presiding Officer

नई दिल्ली, 23 जुलाई, 2020

का.आ. 610.—औद्योगिक विवाद अधिनियम, 1947 (14 का 1947) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स एम.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह - श्रम न्यायालय, भुबनेश्वर के पंचाट (संदर्भ संख्या 18/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.07.2020 को प्राप्त हुआ था।

[सं. एल-22012/02/2016-आईआर (सीएम-2)]

राजेन्द्र सिंह, डेस्क अधिकारी/अनुभाग अधिकारी

New Delhi, the 23rd July, 2020

S. O. 610.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 18/2016) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the Management of M/s. M.C.L. and their workmen, received by the Central Government on 17.07.2020

[No. L-22012/02/2016-IR (CM-II)]

RAJENDER SINGH, Desk Officer/Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 18 OF 2016

Dated Bhubaneswar, the 18th March, 2020

Present: Shri B.C. Rath, Presiding Officer,
CGIT-cum-Labour Court, Bhubaneswar.

Between:

1. The Chief General Manager,
Lingraj Area of MCL,
P.O: Deulbera Talcher, Distt. Angul (Odisha)

2. Col (Retd.) Sri P.K. Mohanta,
Nepam Security Service, VIIM-100,
Sailashree Vihar, Chandrasekharpur, Bhubaneswar-21. ...First party Managements

AND

Sri Sarat Kumar Pradhan
S/o. Haldhar Pradhan, Vill/PO. Jharala,
Dist. Angul (Odisha). ...Second party workman

Appearances:

Sri A. N. Sharma : For first party management No. 1

NONE : For first party management No. 2

Sri S.K. Pradhan : Second party workman himself

AWARD

The Government of India, Ministry of Labour have referred the industrial dispute for adjudication vide its Order No. 22012/02/2016-IR(CM-II) dated 10.03.2016 in exercise of powers conferred by clause (d) of sub-section (10) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) (herein after referred to as 'the Act') and the terms of reference reads as follows:

> "Whether the action of the management of M/s. Actual Security Services, Contractor in terminating the servicves of Sh. Sarat Kumar Pradhan w.e.f. 16.04.2012 is legal & justified ? If not, what relief the workman is entitled to ?''

2. The case of the second party workman is that he was deployed and working as Security Guard in the establishment of the first party management No. 1 from the year 2002 till he was refused employment on 16.4.2012. According to him his engagement was continuous and uninterrupted one till his disengagement and he worked continuously for 240 days in a calendar year preceding to his disengagement. He was not given any notice pay and retrenchment compensation as contemplated in Section 25-F of the Act when he was not allowed to continue in the job of Security Guard. His employment as Security Guard and deployment through the management No. 2 is only a paper transaction, he was actually discharging his duty under director control and supervision of the management No.1. The outsourcing agency/contractor management No.2 refused him to continue in the service of the Security Guard as per the direction of the General Manager of MCL whereas other employees/workmen junior to him in the service were allowed to continue and deployed as Security Guard. There was no deficiency of service on his part and no show cause notice was ever issued to him for any deficiency on his part. He was disengaged on being alleged to have been involved in a theft case even though no theft case is found to have been registered against him in any point of time. Since his dismissal/termination of service being in violation of provision of Section 25-F and 25-G of the Act is illegal and unjustified. Therefore, he shall be reinstated with all back wages and service benefits. On being removed from service by a dismissal order issued by the management No.2, he raised a dispute before the labour machinery and the conciliation initiated before the labour machinery having been failed the reference as mentioned above is made to the Tribunal for adjudication of the dispute in accordance with law.

3. The contractor/outsourcing agency i.e. first party management No.2 failed to appear and contest the claim inspite of notice issued by the Tribunal as a result of which he has been set ex-parte.

4. The management No.1, MCL has contested the claim statement of the second party workman by filing written statement wherein it has been contended that the reference is not maintainable against the said management as there was no relationship of employer and employee between it and the second party workman. As the second party was not given any appointment or any wages was paid to him by the said management, question does not arise for dismissal of service of the second party by the management No. 2. It is the further stand of the management No.1 that the management No.2 was issued with a work order for deployment of Security Guards in the establishment of the management No.1. The second party workman was an employee of the said outsourcing agency and as such, it (management No. 1) has no occasion with continuous or discontinuous of the second party in the job of security guard. Therefore, no liability can be saddled with to the MCL management No.1 for removal/dismissal of service of the workman. As the second party workman and 10 others were alleged to have been involved in a theft case occurred at Badapasi garage in the night between 15th

and 16th April, 2012, the management No.2 dismissed/removed the security guards allegedly involved in the said theft case. As the statement of claim has no merit for consideration against the management of MCL, prayer has been made in the written statement for rejection of the same.

5. On the aforesaid pleadings of the parties, the following issues have been settled.

ISSUES

(i) Whether the reference is maintainable ?

(ii) Whether there exists any employer and employee relationship between the management of Lingaraj Area of MCL and the disputant workman ?

(iii) Whether the action of the contractor in terminating the disputant workman from service with effect from 16.4.2012 is legal and justified ?

(iv) If not, what relief the workman is entitled to ?

6. The second party workman has examined himself as W.W. 1 and filed the documents like copes of the C.M.P.F. card issued by the management, Provident Fund ledger being maintained by collieries, wage slip for the period from April, 2011 to March, 2012, letter issued by the Security Service to the General Manager, MCL Lingaraj Area informing about the dismissal of the workman and the report of I.I.C., Colliery P.S. marked as Ext. 1 to Ext.5 in support of his claim, whereas, the management of MCL has filed affidavit evidence of its witness namely Sri Ramdas Tudu as M.W.1 to refute the claim of the workman. Cross-examination of the said witness is deemed to be declined due to default on the part of the second party workman for which the affidavit evidence of M.W.1 has remained unchallenged and uncontroverted.

FINDINGS

7. All the issues are taken into consideration at a time for the sake of convenience.

8. It is apparent from the pleadings and evidence of the second party workman and the management of MCL that there is no serious dispute to the claim of the second party workman that he was deployed as a Security Guard in the establishment of MCL being engaged by the contractor/outsourcing agency management No.2 and the management No.2 dismissed him from service with effect from 16.4.2012 by a written order Ext.4 wherein it has been mentioned that the second party workman and 11 others were dismissed with effect from 16.4.2012 from security service as they were involved in a theft case occurred at Badapasi Garage in the night of 15th and 16th April, 2012. The second party workman has also admitted in his cross examination that he was receiving wages from the contractor. Though, he claimed to have been engaged by MCL, he has admitted that he did not applied for any job to the MCL and the contractor/outsourcing agency deployed him in MCL. The contractor was taking his attendance in the attendance register maintained by him. A letter of termination of service under Ext. 4 is admittedly issued by the contractor. Other documents filed by the workman are no way connected with MCL. Be that as it may, there is no relationship of employer and employee between the management No.1 and the second party workman. Therefore, the management of MCL is no way responsible or saddled with any liability for the dismissal of the second party workman.

9. However, the evidence of the second party workman is overwhelming to establish that he was under the employment of the management No.2 till his dismissal on 16.4.2012 and the disputant was engaged continuously and uninterruptedly from 1.4.2011 to 16.4.2012. It has been asserted by the second party workman that he is in employment of management No.2 from the year 2002. Such assertion does not seems to have been seriously challenged. He is stated to have not been paid any notice pay and retrenchment compensation before his dismissal on `16.4.2012 as required under Section 25-F of the Act though he is found to have been in the job continuously for 240 days in a calendar year preceding to the alleged dismissal. There is no material before this Tribunal to show that he was ever issued with any show cause or departmentally proceeded with before his dismissal. In the above premises the dismissal of the workman by the contractor/outsourcing agency i.e. management No. 2 is apparently illegal on account of the same being in violation of Section 25-F of the Act.

10. Coming to the issue of relief to which the disputant workman is entitled, it may be stated here that earlier legal position as reflected in the decision of the Hon'ble Supreme Court is that if the termination of an employee was found to be illegal, the relief of reinstatement with back wages was ordinarily followed. However, in the recent past, legal position has been shifted with settled principle thatthat relief by way of reinstatement with back wages or without back wages is not automatic and may be wholly inappropriate in a given facts and situation even though the termination of an employee is in contravention with prescribed procedure. Compensation instead of reinstatement under such a facts and circumstances would be sufficient to meet the ends of justice. Undisputedly the Court/Tribunal shall exercise its discretionary jurisdiction in a judicial and judicious manner taking into consideration the nature of appointment, period of appointment availability of the job, facts and circumstances of termination of service. Coming to the case at hand, the disputant workman has alleged that he was in service for 10 years. But, no evidence seems to have been advanced to establish that the contractor/outsourcing agency has vacancy in its establishment to reengage him. The termination letter issued by the management No.2 discloses that the disputant workman and some others were removed from service due to involvement in a theft case. Thus, a serious allegation relating to an offence of moral turpitude has been raised against the workman while dismissing him. In the above back dopes, the relief of reinstatement may not be appropriate in the case. However, the removal being in violation of Section 25-F of the Act, the management No.2 is directed to pay a compensation of Rs. 50,000/- (Rupees Fifty thousand only) in lieu of reinstatement with back wages. The said compensation amount shall be paid to the disputant workman within two months from the Notification of the Award failing which the workman is entitled to simple interest of 7% (seven percent) per annum on the amount from the date of enforcement of the Award.

Accordingly the reference is answered and Award is passed.

Dictated and corrected by me.

B. C. RATH, Presiding Officer

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